

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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SENATE BILL 542
House Committee Substitute Favorable 8/16/23
Third Edition Engrossed 8/16/23

Short Title: DOL Omnibus/Other Changes.

(Public)

Sponsors:

Referred to:

April 5, 2023

A BILL TO BE ENTITLED
AN ACT TO MAKE OMNIBUS CHANGES TO THE LABOR LAWS OF NORTH
CAROLINA, TO AMEND THE DEFINITION FOR BAR AS IT RELATES TO PUBLIC
HEALTH INSPECTION AND REGULATION, AND TO MAKE VARIOUS CHANGES
TO TRANSPORTATION LAWS.

The General Assembly of North Carolina enacts:

SECTION 1.1. G.S. 95-25.23(a) reads as rewritten:

"(a) Any employer who violates the provisions of G.S. 95-25.5 (Youth Employment) or any regulation issued thereunder, shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00) for the first violation and not to exceed one thousand dollars (\$1,000) for each subsequent violation. In determining the amount of such penalty, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The determination by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, by electronic means to include an email address provided by the employer to the Commissioner, with a delivery receipt, that will be effective to give the employer notice of the penalty, or via hand delivery, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding pursuant to Article 3 of Chapter 150B and in a judicial proceeding pursuant to Article 4 of Chapter 150B."

SECTION 1.2. G.S. 95-25.23A(a) reads as rewritten:

"§ 95-25.23A. Violation of record-keeping requirement; civil penalty.

(a) Any employer who violates the provisions of G.S. 95-25.15(b) or any regulation issued pursuant to G.S. 95-25.15(b), shall be subject to a civil penalty of up to two hundred fifty dollars (\$250.00) per employee with the maximum not to exceed two thousand dollars (\$2,000) seven hundred fifty dollars (\$750.00) per employee with the maximum not to exceed four thousand five hundred dollars (\$4,500) per violation by the Commissioner or the Commissioner's authorized representative. ~~In determining the amount of the penalty, the Commissioner shall consider each of the following:~~

- ~~(1) The appropriateness of the penalty for the size of the business of the employer charged.~~
- ~~(2) The gravity of the violation.~~
- ~~(3) Whether the violation involves an employee under 18 years of age.~~



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1 The determination by the Commissioner shall be final, unless within 15 days after receipt of
2 notice thereof by certified mail with return receipt, by signature confirmation as provided by the
3 U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. §
4 7502(f)(2) with delivery receipt, by electronic means to include an electronic mail address
5 provided by the person to the Commissioner, with a delivery receipt, that will be effective to give
6 the person notice of the violation, or via hand delivery, the person charged with the violation
7 takes exception to the determination, in which event final determination of the penalty shall be
8 made in an administrative proceeding pursuant to Article 3 of Chapter 150B and in a judicial
9 proceeding pursuant to Article 4 of Chapter 150B."

10 **SECTION 2.1.** G.S. 95-69.9 reads as rewritten:

11 **"§ 95-69.9. Definitions.**

12 (a) Repealed by Session Laws 2015-221, s. 2.7, effective August 18, 2015.

13 (b) ~~The term "boiler" shall mean a Boiler.~~ – A closed vessel in which water is heated,
14 steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum
15 by the direct or indirect application of heat. The term "boiler" shall also include fired units for
16 heating or vaporizing liquids other than water where these units are complete within themselves.

17 (b1) ~~The term "Chief Inspector" shall mean the Chief Inspector.~~ – The individual
18 appointed by the Commissioner to hold the office of Chief of the Boiler Safety Bureau within
19 the Department of Labor. The Chief Inspector serves as the North Carolina member on the
20 National Board of Boiler and Pressure Vessel Inspectors.

21 (c) ~~The term "Commissioner" shall mean the Commissioner.~~ – The North Carolina
22 Commissioner of Labor.

23 (d) Repealed by Session Laws 2005-453, s. 1.

24 (d1) ~~The term "Deputy Inspector" shall mean any Deputy Inspector.~~ – Any Boiler and
25 Pressure Vessel Inspector who is employed by the Department of Labor and is subordinate to the
26 Chief Inspector.

27 (d2) Imminent Danger. – Any condition or practice in any location that a boiler or pressure
28 vessel is being operated such that a danger exists that could be expected to cause death or serious
29 physical harm if the condition is not abated.

30 (e) ~~The term "inspection certificate" or "certificate of inspection" shall mean certification~~
31 Inspection Certificate or Certificate of Inspection. – Certification by the Chief Inspector that a
32 boiler or pressure vessel is in compliance with the rules and regulations adopted under this
33 Article.

34 (f) ~~The term "inspector's commission" shall mean a Inspector's Commission.~~ – A written
35 authorization by the Commissioner for a person who has met the qualifications set out in this
36 Article to conduct inspections of boilers and pressure vessels.

37 (f1) Menace to Public Safety. – A boiler or pressure vessel that cannot be operated without
38 a risk of injury to persons and property.

39 (f1)(f2) ~~The term "National Board" shall mean the National Board.~~ – The National Board of
40 Boiler and Pressure Vessel Inspectors.

41 (f2)(f3) ~~The term "person" shall mean any Person.~~ – Any individual, association, partnership,
42 firm, corporation, private organization, or the State of North Carolina or any political subdivision
43 of the State or any unit of local government.

44 (g) ~~The term "pressure vessel" shall mean a Pressure Vessel.~~ – A vessel in which the
45 pressure is obtained from an indirect source or by the application of heat from an indirect source
46 or a direct source, other than those included within the term "boiler".

47 **SECTION 2.2.** G.S. 95-69.10 reads as rewritten:

48 **"§ 95-69.10. Application of Article; exemptions.**

49 ...

50 (b) This Article shall not apply to:

- (1) Boilers and pressure vessels owned or operated by the federal government, unless the agency in question has asked for coverage by this Article.
- (2) Pressure vessels used for transportation or temporary storage of compressed gases when constructed in compliance with the specifications of the United States Department of Transportation and when charged with gas marked, maintained, and periodically requalified for use, as required by appropriate regulations of the United States Department of Transportation. This exemption shall not apply to permanently installed vessels that are refilled on-site.
- (3) Portable pressure vessels used for agricultural purposes only or for pumping or drilling in an open field for water, gas or coal, gold, talc, or other minerals and metals.
- (4) Boilers and pressure vessels which are located in private residences or in apartment houses of less than six families.
- (5) Repealed by Session Laws 2007-231, s. 1, effective July 18, 2007.
- (6) Air tanks located on vehicles licensed under the rules and regulations of other state authorities operating under rules and regulations substantially similar to those of this State and used for carrying passengers or freight within interstate commerce.
- (7) Air tanks installed on right-of-way of railroads and used directly in the operation of ~~trains~~ trains, if installed with proper pressure relief devices, including vessels associated with electrical apparatus in electrical switchyards.
- (8) Any of the following pressure vessels that do not exceed the listed limitations if the vessel is not equipped with a quick actuating closure:
 - a. Five cubic feet in volume and ~~250 psig~~ a maximum allowable working pressure not exceeding 15 psig.
 - b. Three cubic feet in volume and a maximum allowable working pressure not exceeding 350 psig.
 - c. One and one-half cubic feet in volume and a maximum allowable working pressure not exceeding 600 psig.
 - d. An inside diameter of six inches with no limitation on pressure.
 - e. Five cubic feet in volume when the pressure vessel is constructed and operated on the same real property zoned industrial and where its operation is undertaken using commercially acceptable safety precautions for the application.
- (9) Pressure vessels operating at a working pressure not exceeding 15 psig.
- (10) ~~Pressure~~ Unfired hot water storage vessels with a nominal ~~water~~ capacity not exceeding 120 gallons and containing water ~~under pressure~~ at a maximum allowable working pressure not exceeding 160 psig or temperatures not exceeding 120°F, ~~including those containing air, the compression of which serves as a cushion.~~ 210°F.
- (11) Boilers and pressure vessels on railroad steam locomotives that are subject to federal railway safety regulations pursuant to 49 C.F.R. § 230.
- (12) Repealed by Session Laws 1985, c. 620, s. 2.
- (13) Coil-type hot water supply boilers, generally referred to as steam jennies, where the water can flash into steam when released directly to the atmosphere through a manually operated nozzle and where adequate safety relief valves and controls are installed on them, provided none of the following limitations are exceeded:
 - a. There is no drum, header, or other steam space.

- 1 b. No steam is generated within the coil.
- 2 c. Maximum 1 inch tube size.
- 3 d. Maximum 3/4 inch nominal pipe size.
- 4 e. Maximum 6 gallon nominal water storage capacity.
- 5 f. Water temperature of 350°F.
- 6 (14) Pressure vessels containing water under pressure, including those containing
- 7 air, the compression of which serves as a cushion, at a temperature not
- 8 exceeding 110 degrees ~~fahrenheit~~ Fahrenheit and a maximum allowable
- 9 working pressure not exceeding 300 psig, except that this provision shall not
- 10 exclude hydropneumatic pressure vessels providing potable water service
- 11 from regulation.
- 12 (15) An air tank that does not exceed eight cubic feet in volume that is installed on
- 13 a service vehicle.
- 14 (16) Autoclaves in medical offices and hospitals that are less than five cubic feet
- 15 in volume, even if they are equipped with a quick actuating closure.
- 16 (17) Coil-type hot water supply boilers of the instantaneous type where adequate
- 17 safety relief valves and controls are installed if none of the following
- 18 limitations are exceeded:
- 19 a. There is no drum or header.
- 20 b. No steam is generated within the coil.
- 21 c. Maximum one-inch tube size.
- 22 d. Maximum three-quarter-inch nominal pipe size.
- 23 e. Maximum six-gallon nominal water storage capacity.
- 24 f. Water temperature not to exceed 250°F.
- 25 g. Maximum heat input does not exceed 400,000 Btu/hr or 110 kW.
- 26 h. Maximum allowable working pressure of 260 psig.
- 27 (18) Toy boilers, if all of the following apply:
- 28 a. The water containing volume of the boiler is less than one quart.
- 29 b. The operating pressure does not exceed 15 psig.
- 30 c. The maximum outside diameter of the shell is no greater than six
- 31 inches.
- 32 d. The boiler is manually fired by solid fuels.
- 33 (19) Pressure vessels ~~associated with electrical apparatus in electrical switchyards~~
- 34 ~~if the pressure vessels have proper pressure relief devices providing potable~~
- 35 water service having an internal bladder for containing an air cushion,
- 36 provided the vessels are not connected to a continuous air source for the
- 37 purpose of monitoring and maintaining air pressure or volume.
- 38 (20) Carbon dioxide tanks used in beverage dispensing service.
- 39 (c) The construction and inspection requirements established by the Department of Labor
- 40 shall not apply to hot water supply boilers or water heaters which are directly fired with oil, gas,
- 41 or electricity, or to ~~hot water storage tanks indirect fired water heaters~~ heated by steam or any
- 42 other indirect means, if they are equipped with ASME Code and National Board certified safety
- 43 relief valves and do not exceed any of the following limitations:
- 44 (1) Heat input of 200,000 Btu/hr or 58.6 kW.
- 45 (2) Repealed by Session Laws 2005-453, s. 2.
- 46 (3) Nominal water capacity of 120 gallons.
- 47"

SECTION 2.3. G.S. 95-69.17 reads as rewritten:

"§ 95-69.17. Noncomplying devices; appeal.

(a) If the Commissioner determines that a boiler or pressure vessel is subject to the provisions of this Article and that the operation of the boiler or pressure vessel is exposing the

public to an unsafe condition likely to result in serious personal injury or property damage, the Commissioner may immediately order in writing that the use of the boiler or pressure vessel be stopped or limited until the Commissioner determines that the boiler or pressure vessel has been made safe for operation.

(b) If the Commissioner determines that the provisions of this Article or the rules adopted pursuant to this Article have not been complied with, to include nonpayment of fees within 30 days of assessment, the Commissioner may refuse to issue or renew or may revoke, suspend, or amend an inspection certificate.

(c) Any action taken under this section by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, by electronic means to include an electronic mail address provided by the person to the Commissioner, with a delivery receipt, that will be effective to give the person notice of the penalty, or via hand delivery, the person against whom such action was taken takes exception to the determination, in which event the final determination of the action shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act."

SECTION 2.4. G.S. 95-69.18 is amended by adding a new subsection to read:

"(d) No person may operate or permit to be operated any boiler or pressure vessel subject to the provisions of this Article after the Commissioner has refused to issue, refused to renew, or has revoked an inspection certificate for nonpayment of fees."

SECTION 2.5. G.S. 95-69.19 reads as rewritten:

"§ 95-69.19. Violations; civil penalties; appeals.

(a) ~~Any person who violates G.S. 95-69.18(a) or (b) (operation without inspection certificate; operation not in accordance with Article or rules and regulations) shall be subject to a civil penalty not to exceed two hundred fifty dollars (\$250.00) for each day each boiler or pressure vessel is so operated or used.~~

(b) ~~Any person who violates G.S. 95-69.18(c) (operation after refusal to issue or after revocation of inspection certificate) G.S. 95-69.18 shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00) for each day any such boiler or pressure vessel is so operated or used.~~ verified by an inspector to be operated or used in a condition considered to be a menace to public safety or an imminent danger.

(c) ~~In determining the amount of any penalty ordered under authority of this section, the Commissioner shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the person being charged, the gravity of the violation, the good faith of the person, and the record of previous violations.~~

(d) The determination of the amount of the penalty by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, by electronic means to include an email address provided by the person to the Commissioner, with a delivery receipt, that will be effective to give the person notice of the violation, or via hand delivery, the person charged with the violation takes exception to the determination in which event the final determination of the penalty shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.

(e) The Commissioner may file in the office of the clerk of the superior court of the county where the violation occurred or where the person against whom a civil penalty has been ordered resides, or if a corporation is involved in the county where the corporation maintains its principal place of business, a certified copy of a final order of the Commissioner unappealed from, or of a final order of the Commissioner affirmed upon appeal. Upon filing of the final order, the clerk of superior court shall enter judgment in accordance with the order and notify the

parties. The judgment shall have the same force and effect as a judgment by the superior court of the General Court of Justice."

SECTION 3.1. G.S. 95-110.6(c) reads as rewritten:

"(c) Any action taken under this section by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, by electronic means to include an electronic mail address provided by the person to the Commissioner, with a delivery receipt, that will be effective to give the person notice, or via hand delivery, the person against whom such action was taken takes exception to the determination, in which event the final determination of the action shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act."

SECTION 3.2. G.S. 95-110.10(e) reads as rewritten:

"(e) The determination of the amount of the penalty by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, by electronic means to include an electronic mail address provided by the person to the Commissioner, with a delivery receipt, that will be effective to give the person notice, or via hand delivery, the person charged with the violation takes exception to the determination in which event the final determination of the penalty shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act."

SECTION 4.1. G.S. 95-111.6(c) reads as rewritten:

"(c) Any action taken under this section by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, by electronic means to include an electronic mail address provided by the person to the Commissioner, with a delivery receipt, that will be effective to give the person notice, or via hand delivery, the person against whom such action was taken takes exception to the determination, in which event the final determination of the action shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act."

SECTION 4.2. G.S. 95-111.13(g) reads as rewritten:

"(g) The determination of the amount of the penalty by the Commissioner is final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, by electronic means to include an electronic mail address provided by the person to the Commissioner, with a delivery receipt, that will be effective to give the person notice, or via hand delivery, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act."

SECTION 5.1. G.S. 95-123 reads as rewritten:

"§ 95-123. Orders.

If, after investigation, the Commissioner finds that a violation of any of his rules and regulations exists, or that there is a condition in passenger tramway construction, operation, or maintenance which endangers the safety of the public, the Commissioner shall forthwith issue his written order setting forth his findings, the corrective action to be taken, and fixing a reasonable time for compliance therewith. The order shall be sent to the affected operator by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with

1 delivery receipt, by electronic means to include an electronic mail address provided by the person
2 to the Commissioner, with a delivery receipt, that will be effective to give the person notice, or
3 via hand delivery, and shall become final unless the operator contests the order by filing a petition
4 for a contested case under G.S. 150B-23 within 20 days after receiving the order. The
5 Commissioner shall have the power to institute injunctive proceedings in any court of competent
6 jurisdiction of the district court district as defined in G.S. 7A-133 or superior court district or set
7 of districts as defined in G.S. 7A-41.1, as the case may be, in which the passenger tramway is
8 located for the purpose of restraining the operation of said tramway or for compelling compliance
9 with any lawful order of the Commissioner. Judicial review of a final decision under this section
10 may be obtained under Article 4 of Chapter 150B of the General Statutes."

11 **SECTION 5.2.** G.S. 95-125.3(e) reads as rewritten:

12 "(e) The Commissioner's determination of the amount of the penalty is final, unless within
13 15 days after receipt of notice thereof by certified mail with return receipt, by signature
14 confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized
15 pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, by electronic means to include an
16 electronic mail address provided by the person to the Commissioner, with a delivery receipt, that
17 will be effective to give the person notice, or via hand delivery, the person charged with the
18 violation takes exception to the determination, in which event final determination of the penalty
19 shall be made in an administrative proceeding pursuant to Chapter 150B of the General Statutes,
20 the Administrative Procedures Act."

21 **SECTION 6.1.** G.S. 95-137(b) reads as rewritten:

22 "(b) Procedure for Enforcement. –

23 (1) If, after an inspection or investigation, the Director issues a citation under any
24 provisions of this Article, the Director shall, within a reasonable time after the
25 termination of such inspection or investigation, notify the employer by
26 certified mail with return receipt, by signature confirmation as provided by
27 the U.S. Postal [Service], by a designated delivery service authorized pursuant
28 to 26 U.S.C. § 7502(f)(2) with delivery receipt, by electronic means to
29 include an electronic mail address provided by the person to the
30 Commissioner, with a delivery receipt, that will be effective to give the person
31 notice, or via hand delivery of any ~~penalty, citation,~~ if any, the Director has
32 recommended to the Commissioner to be proposed under the provisions of
33 this Article and that the employer has 15 working days within which to notify
34 the Director in writing that the employer wishes to:

- 35 a. Contest the citation or proposed assessment of penalty; or
36 b. Request an informal conference.

37 Following an informal conference, unless the employer and Department have
38 entered into a settlement agreement, the Director shall send the employer an
39 amended citation or notice of no change. The employer has 15 working days
40 from the receipt of the amended citation or notice of no change to notify the
41 Director that the employer wishes to contest the citation or proposed
42 assessment of penalty, whether or not amended. If, within 15 working days
43 from the receipt of the notice issued by the Director, the employer fails to
44 notify the Director in writing that the employer requires an informal
45 conference to be held or intends to contest the citation or proposed assessment
46 of penalty, and no notice is filed by any employee or representative of
47 employees under the provisions of this Article within such time, the citation
48 and the assessment as proposed to the Commissioner shall be deemed final
49 and not subject to review by any court.

50 (2) If the Director has reason to believe that an employer has failed to correct a
51 violation for which a citation has been issued within the period permitted for

its correction (which period shall not begin to run until the entry of a final order by the Commission in case of any review proceedings under this Article initiated by the employer in good faith and not solely for a delay or avoidance of penalties), the Director shall notify the employer by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, by electronic means to include an electronic mail address provided by the person to the Commissioner, with a delivery receipt, that will be effective to give the person notice, or via hand delivery of such failure and of the penalty proposed to be assessed under this Article by reason of such failure and that the employer has 15 working days within which to notify the Director that the employer wishes to contest the Director's notification of the proposed assessment of penalty. If, within 15 working days from the receipt of notification issued by the Director, an employer fails to notify the Director that the employer intends to contest the notification or proposed recommendation of penalty, the notification and the proposed assessment made by the Director shall be final and not subject to review by any court.

...."

SECTION 7.1. G.S. 95-234(a) reads as rewritten:

"(a) Any examiner who violates the provisions of this Article shall be subject to a civil penalty of up to two hundred fifty dollars (\$250.00) per affected examinee with the maximum not to exceed one thousand dollars (\$1,000) per investigation by the Commissioner of Labor or his authorized representative. In determining the amount of the penalty, the Commissioner shall consider:

- (1) The appropriateness of the penalty for the size of the business of the employer charged; and
- (2) The gravity of the violation.

The determination by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, by electronic means to include an electronic mail address provided by the person to the Commissioner, with a delivery receipt, that will be effective to give the person notice, or via hand delivery, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding pursuant to Article 3 of Chapter 150B and which final determination shall be subject to judicial review in a judicial proceeding pursuant to Article 4 of Chapter 150B."

SECTION 8.5.(a) G.S. 130A-247 reads as rewritten:

"§ 130A-247. Definitions.

The following definitions shall apply throughout this Part:

- (1) "Bar" is as defined in G.S. 18B-1000(1); means an establishment with a permit to sell alcoholic beverages pursuant to subdivision (1), (3), (5), or (10) of G.S. 18B-1001 and that does not prepare or serve food as defined in this Part other than beverage garnishes, ice, or food that does not require time/temperature control for safety as set out in G.S. 130A-248(a) and implementing rules, and that is in an unopened original commercial package, except for food used as a beverage garnish.

...."

SECTION 8.5.(b) G.S. 130A-250 reads as rewritten:

"§ 130A-250. Exemptions.

The following shall be exempt from this Part:

1 ...

2 (4a) ~~Bars~~ Bars as defined in G.S. 130A-247.

3"

4 **SECTION 8.5.(c)** This section becomes effective January 1, 2024.

5 **SECTION 8.7.(a)** Section 20.4(b) of S.L. 2022-74, as amended by Section 22(a) of
6 S.L. 2023-46, reads as rewritten:

7 "**SECTION 20.4.(b)** ~~G.S. 147-69.22(a)(22)~~ G.S. 147-69.2(a)(22) and G.S. 147-69.6A are
8 repealed."

9 **SECTION 8.7.(b)** This section is effective retroactively to July 1, 2022.

10 **SECTION 9.1.** Subdivision (1) of Section 1.7 of S.L. 2019-251 reads as rewritten:

11 "(1) \$30,000,000 for current and future activities related to recovery from
12 Hurricane Dorian such as debris removal and repair of highway infrastructure
13 damage. Any remaining funds not required for Hurricane Dorian expenses
14 shall be used to continue the Department's Resilience Program."

15 **SECTION 10.1.(a)** G.S. 143-134 is amended by adding a new subsection to read:

16 "(c) Notwithstanding subsection (a) of this section, this Article does not apply to public
17 building contracts entered into by the Department of Transportation for the construction,
18 alteration, or repair of facilities jointly occupied by personnel of the Division of Motor Vehicles,
19 of the Department of Transportation, and of the North Carolina Highway Patrol, but, with respect
20 to these contracts, the powers and duties established in this Article shall be exercised by the
21 Department of Transportation and the Secretary of Administration, and other State officers,
22 employees, or agencies shall have no duties or responsibilities concerning the contracts. The
23 Department of Transportation shall advertise and award contracts in the manner required by this
24 Article. Upon request, the Department of Administration shall assist the Department of
25 Transportation in advertising and awarding a contract under this subsection. Construction,
26 alteration, and repair of facilities under this subsection may be subject to local building permit
27 requirements."

28 **SECTION 10.1.(b)** This section is effective when it becomes law and applies to
29 contracts entered into on or after that date.

30 **SECTION 11.1.(a)** G.S. 143-299.2 reads as rewritten:

31 "**§ 143-299.2. Limitation on payments by the State.**

32 (a) The maximum amount that the State may pay cumulatively to all claimants on account
33 of injury and damage to any one person arising out of any one occurrence, whether the claim or
34 claims are brought under this Article, or Article 31A or Article 31B of this Chapter, shall be one
35 million dollars (\$1,000,000), less any commercial liability insurance purchased by the State and
36 applicable to the claim or claims under G.S. 143-291(b), 143-300.6(c), or 143-300.16(c).

37 (a1) The maximum amount that the Department of Transportation may pay cumulatively
38 to all claimants on account of injury and damage to any one person arising out of any one
39 occurrence, whether the claim or claims are brought under this Article, or Article 31A or Article
40 31B of this Chapter, shall be three million dollars (\$3,000,000), less any commercial liability
41 insurance purchased by the Department and applicable to the claim or claims under
42 G.S. 143-291(b), 143-300.6(c), or 143-300.16(c).

43 (b) The fact that a claim or claims may be brought under more than one Article under this
44 Chapter shall not increase the above maximum liability of the State."

45 **SECTION 11.1.(b)** G.S. 136-18 is amended by adding a new subdivision to read:

46 "(47) To purchase and maintain an umbrella policy of commercial liability
47 insurance providing coverage in an amount up to ten million dollars
48 (\$10,000,000) beyond the limits of commercial liability insurance policies
49 otherwise authorized by law."

50 **SECTION 11.1.(c)** This section is effective when it becomes law and applies
51 retroactively to January 1, 2021.

1 **SECTION 12.1.** The Division of Motor Vehicles of the North Carolina Department
2 of Transportation shall study ways to modernize and improve dealer license plates issued by the
3 Division, including the process for issuance and format and design of the plates. The Division
4 shall report its findings, including any legislative recommendations, to the North Carolina
5 General Assembly, the chairs of the Joint Legislative Transportation Oversight Committee, and
6 the Fiscal Research Division no later than December 31, 2023.

7 **SECTION 13.1.(a)** Article 3 of Chapter 20 of the General Statutes is amended by
8 adding a new section to read:

9 **"§ 20-79.1B. Print-on-demand temporary registration plates.**

10 (a) Implementation. – No later than January 1, 2024, the Division shall implement a
11 statewide print-on-demand temporary registration plate system for on-demand printing of
12 temporary registration plates with vehicle owner information electronically associated and
13 transferred to the Division as required by this Chapter. Plates issued through the print-on-demand
14 temporary registration plate system implemented under this section are in lieu of temporary plates
15 issued by dealers under G.S. 20-79.1 and temporary registration plates issued by commission
16 contractors under G.S. 20-50(b) but are otherwise subject to all conditions and limitations
17 applicable to temporary registration plates set forth in this Article. The Division shall contract
18 with a qualified vendor or vendors after consultation with the North Carolina Automobile Dealers
19 Association and the Carolinas Independent Automobile Dealers Association to develop and
20 implement this statewide print-on-demand temporary registration plate system.

21 (b) Minimum Standards for System. – When contracting with a qualified vendor or
22 vendors to implement the system required in subsection (a) of this section, the Division shall set
23 the following minimum standards:

24 (1) The Division shall issue a competitive request for proposal to assess the
25 qualifications of any vendor or vendors responsible for the establishment and
26 ongoing support of the statewide print-on-demand temporary registration
27 plate system. The Division may also reserve the right to receive input
28 regarding specifications for the print-on-demand temporary registration plate
29 system from parties that do not respond to a request for proposal to establish
30 and operate a print-on-demand temporary registration plate system. The
31 Division shall select at least two vendors.

32 (2) Any contract entered into with a vendor or vendors shall include no costs or
33 charges payable by the Division to the vendor or vendors. The vendor or
34 vendors shall reimburse the Division for documented reasonable
35 implementation costs directly associated with the establishment of the
36 statewide print-on-demand temporary registration plate system.

37 (3) Upon implementation of the print-on-demand temporary registration plate
38 system, the qualified vendor or vendors may charge participating motor
39 vehicle dealers or their agents a fee for each temporary registration plate
40 printed and registered with the Division. The print-on-demand temporary
41 registration plate fee shall be consistent with market pricing in an amount not
42 to exceed fifteen dollars (\$15.00) for costs associated with the development
43 and ongoing administration of the print-on-demand temporary registration
44 plate system. The qualified vendor or vendors shall not charge motor vehicle
45 dealers or their agents any additional fee for the printing and registration of a
46 print-on-demand temporary registration plate. To recover their costs,
47 participating motor vehicle dealers or their agents may charge the purchaser
48 of a motor vehicle or lessee of an automotive lease an amount equal to the
49 print-on-demand temporary registration plate fee plus a fee in an amount not
50 to exceed fifteen dollars (\$15.00) for each print-on-demand temporary
51 registration plate printed and registered with the Division.

- (4) The print-on-demand temporary registration plate system must include the following elements:
- a. A design and layout for the print-on-demand temporary registration plate established by the Division and of a quality as to resist deterioration or fading from exposure to the elements during the period for which display is required.
 - b. The ability of motor vehicle dealers to directly connect to the system in order to issue print-on-demand temporary registration plates to the owner or lessee of a motor vehicle that will be registered in this State or another state, including a web-based option for motor vehicle dealers who do not utilize an online vehicle registration vendor to complete and file Division required documents related to motor vehicle titling and registration.
 - c. The ability of commission contractors to directly connect to the system in order to issue print-on-demand temporary registration plates to the owner or lessee of a motor vehicle.
 - d. Each print-on-demand temporary registration plate must contain identifying information for the motor vehicle, as determined by the Division, to include the date of issue, the date of expiration, the name of the issuing entity, and unique identifying information for the plate that will be assigned by the Division.
 - e. The ability for identifying information on a print-on-demand temporary registration plate and vehicle owner information to be transmitted to the Division upon issuance of the plate.
 - f. The ability to implement and maintain a distribution procedure for print-on-demand temporary registration plates in accordance with subsections (c) and (d) of this section.

(c) Distribution of Print-on-Demand Temporary Registration Plate Materials. – In order to assist the Division with the administration and security of the print-on-demand temporary registration system, the system shall include a procedure for a motor vehicle dealer to obtain print-on-demand temporary registration plate materials from a registered distributor. A commission contractor may obtain print-on-demand temporary registration plate materials from a registered distributor or the Division. A registered distributor may charge a fee for distribution of print-on-demand temporary registration plate materials not to exceed ten dollars (\$10.00) per print-on-demand temporary registration plate.

(d) Print-on-Demand Temporary Registration Plate Materials Distributors. – The Division shall register two print-on-demand temporary registration plate materials distributors in the State. One registered distributor shall be a trade association composed of a minimum of 400 new motor vehicle dealers located in this State. One registered distributor shall be a trade association comprised of a minimum of 400 used motor vehicle dealers located in this State.

(e) Experience Required. – Qualified vendors shall have experience in directly providing electronic solutions to State motor vehicle departments or agencies.

(f) Mandatory Participation. – Beginning on October 1, 2024, all motor vehicle dealers and other entities that issue at least five temporary registration plates annually shall utilize exclusively the print-on-demand temporary registration plate system for the issuance of all temporary registration plates to vehicle owners or lessees.

(g) Definition. – For purposes of this section, "print-on-demand temporary registration plate system" means a computerized system that allows the on-demand and on-site printing of required vehicle registration and other information on a temporary registration plate by the issuer of the plate and allows required information about the vehicle owner or lessee to whom the temporary plate has been issued to be transferred to the Division in electronic format."

1 **SECTION 13.1.(b)** This section is effective when it becomes law. The Division of
2 Motor Vehicles may adopt rules to implement the provisions of this section.

3 **SECTION 14.1.(a)** Article 2D of Chapter 136 of the General Statutes is amended by
4 adding a new section to read:

5 **"§ 136-44.40. Limitations on rail transportation liability for S-Line Corridor acquisition.**

6 (a) As used in this section:

7 (1) "Claim" means a claim, action, suit, or request for damages, whether
8 compensatory, punitive, or otherwise, made by any person or entity against
9 any of the following:

10 a. The Department of Transportation, or a railroad.

11 b. A Regional Public Transportation Authority as defined by
12 G.S. 160A-601(6), a city as defined by G.S. 160A-1(2), or a county
13 listed in G.S. 153A-10 pursuant to a contract authorized by subsection
14 (b) of this section.

15 c. An officer, director, trustee, employee, parent, subsidiary, or affiliated
16 corporation as defined in G.S. 105-130.2, or agent of the Department,
17 a railroad, or a Regional Public Transportation Authority, city, or
18 county as authorized by subsection (b) of this section.

19 (2) "S-Line Corridor" means that portion of the rail corridor located generally
20 between Raleigh and Ridgeway, also known as the S-Line, which is to be
21 acquired by the Department, as it may now be constituted or hereafter
22 enlarged, adjusted, or relocated, and shall include any additional real property
23 from any source and howsoever acquired if used for or in connection with
24 passenger rail service on or near the S-Line.

25 (3) "Passenger rail claims" means claims arising out of or relating to any of the
26 following:

27 a. The transportation of rail passengers on behalf of the Department on
28 the S-Line Corridor.

29 b. Services performed by a railroad pursuant to a contract with the
30 Department in connection with the transportation of rail passengers on
31 the S-Line Corridor, including, but not limited to, the operation of
32 trains; the use of right-of-way, trackage, public or private roadway and
33 rail crossings, equipment, or station areas or appurtenant facilities; the
34 design, construction, reconstruction, operation, or maintenance of rail
35 related equipment, tracks, and any appurtenant facilities.

36 c. An incident occurring on property owned by the Department or a
37 railroad, or otherwise occupied by the Department or a railroad,
38 pursuant to charter grant, fee simple deed, lease, easement, license,
39 trackage rights, or other form of ownership or authorized use, and
40 intended for current or future use in connection with passenger rail
41 service on the S-Line.

42 (4) "Railroad" means a railroad corporation or railroad company from whom the
43 Department has acquired an interest in land related to passenger rail service,
44 its successors in interest, the National Railroad Passenger Corporation, or any
45 other intercity rail passenger service provider, and, in the case of all of the
46 foregoing, that has entered into any contracts or operating agreements of any
47 kind with the Department for operations on the S-Line Corridor.

48 (b) Contracts Allocating Financial Responsibility Authorized. – The Department may
49 contract with any railroad, Regional Public Transportation Authority authorized pursuant to
50 G.S. 160A-626, county authorized pursuant to G.S. 153A-279, or city authorized pursuant to
51 G.S. 160A-326 to allocate financial responsibility for passenger rail claims as defined in

subsection (a) of this section, including, but not limited to, the execution of indemnity agreements, notwithstanding any other statutory, common law, public policy, or other prohibition against the same, and regardless of the nature of the claim or the conduct giving rise to such claim.

(c) Insurance Required. – If the Department enters into any contract authorized by subsection (b) of this section, the Department shall secure and maintain a liability insurance policy covering the liability of the parties to the contract and a railroad that owns or claims an interest in any real property subject to the contract for all property damage, personal injury, bodily injury, and death arising out of or related to passenger rail claims, regardless of whether or not the claim exceeds the self-insured retention of the policy. The policy shall name the parties to the contract and the railroad that owns or claims an interest in any real property subject to the contract as named insureds and shall have policy limits as provided in the contract, which amount shall not exceed the then current limitation of liability provided in 49 U.S.C. § 28103 (or any successor legislation) and may include a self-insured retention in an amount of not more than five million dollars (\$5,000,000). The Department shall establish a fund or other means of satisfying passenger rail claims up to the amount of the self-insured retention.

(d) Liability Limit. – The aggregate liability of the Department and railroad for all passenger rail claims arising from a single accident or incident for property damage, personal injury, bodily injury, and death of passengers is limited to the current limitations of liability provided in 49 U.S.C. § 28103 (or any successor legislation) or to any proceeds available under any insurance policy secured pursuant to subsection (c) of this section, whichever is greater.

(e) Effect on Other Laws. – This section shall not affect the damages that may be recovered under the Federal Employers' Liability Act, 45 U.S.C. § 51, et seq., (1908); or under Article 1 of Chapter 97 of the General Statutes.

(f) Sovereign Immunity not Waived. – Neither the provisions of this section nor acts of the Department, including the procurement of insurance or self-insurance, shall be deemed a waiver of any sovereign immunity for tort to which the Department or its directors, officers, employees, or agents are otherwise entitled."

SECTION 14.1.(b) This section is effective when it becomes law and applies to contracts entered into on or after that date.

SECTION 15.1.(a) Chapter 160A of the General Statutes is amended by adding a new Article to read:

"Article 33.

"Rail Transportation Corridor Authority.

"§ 160A-880. Title and purpose.

This Article shall be known and may be cited as the "Rail Transportation Corridor Authority Act." The purpose of this Article is to authorize the creation of an Authority to establish, construct, purchase, maintain, equip, and operate any structure, facility, or improvement to aid commerce, public transportation, and any other rail services associated with rail corridors.

"§ 160A-881. Definitions.

The following definitions apply in this Article:

(1) Authority. – A Rail Transportation Corridor Authority.

(2) Board of Trustees. – The governing board of an Authority.

(3) Costs. – The capital cost of a rail corridor project or special user project, including:

a. The costs of doing any or all of the following:

1. Acquiring, constructing, erecting, providing, developing, installing, furnishing, and equipping.

2. Reconstructing, remodeling, altering, renovating, replacing, refurnishing, and reequipping.

3. Enlarging, expanding, and extending.

4. Demolishing, relocating, improving, grading, draining, landscaping, paving, widening, and resurfacing.
- b. The costs of all property, both real and personal and both improved and unimproved, and of plants, works, appurtenances, structures, facilities, furnishings, machinery, equipment, vehicles, easements, water rights, air rights, franchises, and licenses used or useful in connection with the rail corridor project or special user project.
- c. The costs of demolishing or moving structures from land acquired and acquiring land to which the structures are to be moved.
- d. Financing charges, including estimated interest during the acquisition or construction of a rail corridor project or special user project and for one year thereafter.
- e. The costs of services to provide plans, specifications, studies, reports, surveys, and estimates of costs and revenues.
- f. The costs of paying any interim financing, including principal, interest, and premium, related to the acquisition or construction of the rail corridor project or special user project.
- g. Administrative and legal expenses and administrative charges.
- h. The costs of obtaining bond and reserve fund insurance and investment contracts, of credit enhancement facilities, liquidity facilities, and interest rate agreements and of establishing and maintaining debt service and other reserves.
- i. Any other services, costs, and expenses necessary or incidental to the rail corridor project or special user project.
- (4) Credit facility. – An agreement with a banking institution, an insurance institution, an investment institution, or other financial institution located inside or outside the United States of America that provides for prompt payment, whether at maturity, presentment, or tender for purchase, redemption, or acceleration, of part or all of the principal or purchase price, redemption premium, if any, and interest on a bond or note issued by the Authority and for repayment of the institution.
- (5) Financing agreement. – A written instrument establishing the rights and responsibilities of the Authority and the operator concerning a special user project financed by the issuance of bonds. A financing agreement may be a lease, a lease and lease back, a sale and lease back, a lease purchase, an installment sale and purchase agreement, a conditional sales agreement, a secured or unsecured loan agreement, or other similar contract and may involve property in addition to the property financed with the bonds.
- (6) Obligor. – A person, including an operator, who has entered into a financing or other agreement obligating the person to make payments to the Authority or to holders of bonds issued to finance a special user project.
- (7) Operator. – The person entitled to the use or occupancy of a special user project.
- (8) Organizing entity. – The elected boards of county commissioners and each municipality that have created or joined an Authority in accordance with G.S. 160A-883.
- (9) Par formula. – A provision or formula to make periodic adjustments in the interest rate of a bond or note, including:
- a. A provision for an adjustment to keep the purchase price of the bond or note in the open market as close to par as possible.

- b. A provision for an adjustment based on one or more percentages of a prime rate or base rate that may vary or apply for specified periods of time.
- c. Any other provision that does not materially and adversely affect the financial position of the Authority and the marketing of the bonds or notes at a reasonable interest cost to the Authority.
- (10) Person. – Any person, corporation, partnership, association, trust, or other legal entity.
- (11) Public transportation. – Transportation of passengers whether or not for hire by any means of conveyance, including, but not limited to, a street or elevated railway or guideway, subway, motor vehicle or motor bus, carpool or vanpool, either publicly or privately owned and operated, holding itself out to the general public for the transportation of persons within or working within the territorial jurisdiction of the Authority or as otherwise provide by this Article.
- (12) Public transportation system. – Without limitation, a combination of real and personal property, structures, improvements, buildings, equipment, vehicle parking, or other facilities, railroads and railroad rights-of-way whether held in fee simple by quitclaim or easement, and rights-of-way, or any combination thereof, used or useful for the purposes of public transportation.
- (13) Rail. – Transportation of passengers, as a mode of public transportation, or freight utilizing fixed or semi-fixed tracks.
- (14) Railroad. – Any person or company providing transportation by rail for compensation.
- (15) Rail corridor. – A combination of rail line and real and personal property, structures, improvements, buildings, equipment, vehicle parking, and other appurtenant fixtures essential to rail operations and public transportation, including any facilities, maintenance yard, marshalling yard, transfer yard, utilities, pedestrian foot paths, and bicycle paths.
- (16) Rail corridor project. – Any of the following that is part of or used in connection with a rail corridor and is not a special user project:
- a. Any land, equipment, or buildings or other structures, whether located on one or more sites within the rail corridor.
- b. The addition to or the rehabilitation, improvement, renovation, or enlargement of any property described in sub-subdivision a. of this subdivision.
- The term includes infrastructure improvements, such as improvements to railroad facilities, roads, bridges, and water, sewer, or electric utilities. A rail corridor project may include a facility leased to one or more entities under a true lease.
- (17) Rail Transportation Corridor Authority. – A public body corporate and politic organized in accordance with the provisions of this Article for the purposes, with the powers, and subject to the restrictions hereinafter set forth.
- (18) Revenues. – For a special user project, the term means rents, fees, charges, payments, proceeds, or other income or profit derived from the special user project or from the financing agreement or security document for the special user project. For a rail corridor project, the term means rents, fees, charges, payments, proceeds, or other income or profit derived from the rail corridor project or from any pledge of nontax revenues, appropriation, or payment made by the State or unit of local government in which the rail corridor is located.

(19) Security document. – One or more written instruments establishing the rights and responsibilities of the Authority and the holders of bonds issued to finance a special user project. A security document may provide for, or be in the form of an agreement with, a trustee for the benefit of the bondholders. A security document may contain an assignment, pledge, mortgage, or other encumbrance of part or all of the Authority's interest in, or right to receive revenues from, a special user project or any other property provided by the operator or other obligor under a financing agreement. A financing agreement and a security document may be combined as one instrument.

(20) Special user project. – Any land, equipment, or buildings or other structures located on one or more sites within the rail corridor and the addition to or the rehabilitation, improvement, renovation, or enlargement of a structure located within the rail corridor when the property is to be used as or in connection with any of the following:

a. An undertaking for industry, including an industrial or a manufacturing factory, mill, assembly plant, or fabricating plant, a freight terminal, an industrial research, development, or laboratory facility, or an industrial processing or distribution facility for industrial or manufactured products.

b. A commercial, processing, mining, transportation, distribution, storage, marine, aviation, rail, or environmental facility or improvement.

c. Any combination of items mentioned in sub-subdivisions a. and b. of this subdivision.

A special user project, during its economic life, is to be principally used by one or more for-profit entities other than as lessee under a lease that has a fair market value rental and is not treated as a financing lease or installment sale for federal tax law purposes. A special user project may include all appurtenances and incidental facilities such as land, a headquarters or office facility, warehouses, distribution centers, access roads, sidewalks, utilities, railway sidings, trucking and similar facilities, parking facilities, waterways, docks, wharves, and other improvements necessary or convenient for the construction, maintenance, and operation of any structure.

(21) Unit of local government. – A county, city, town, or municipality of this State, and any other political subdivision, public corporation, authority, or district in this State, that is or may be authorized by law to acquire, establish, construct, improve, maintain, own, or operate a rail corridor.

(22) Unit of local government's chief administrative official. – The county manager, city manager, town manager, or other person in whom the responsibility for the unit of local government's administrative duties is vested.

"§ 160A-882. Definition of territorial jurisdiction of the Authority; rail corridor boundary and service area designation.

(a) An Authority may be created for any area of the State that, at the time of creating the Authority, consists of three or more counties containing portions of an existing rail corridor.

(b) The territorial jurisdiction of the Authority shall be coterminous with the boundaries of the three or more organizing counties.

(c) The rail corridor service area of the Authority shall be designated by and recorded in the minutes of the Board of Trustees, consistent with its purpose, and shall not exceed the immediately adjacent and proximate area of the rail corridor as owned or otherwise controlled by the Authority for the powers provided under G.S. 160A-886.

(d) The boundaries of the rail corridor of the Authority shall be designated by and recorded in the minutes of the Board of Trustees once the properties and rail line making up the rail corridor are in the Authority's possession or control. If there is a change in the rail corridor boundaries after it is initially designated, the rail corridor designation shall be updated and recorded in the minutes of the Board of Trustees at its next meeting. The Authority may not extend the rail corridor into a political subdivision that is not an organizing entity under G.S. 160A-883 without (i) the consent of the governing body of that political subdivision or (ii) the political subdivision having first become an organizing entity as provided under G.S. 160A-883(e). A majority vote of the governing body shall constitute consent.

(e) The designation required by subsection (d) of this section shall describe the rail corridor boundaries by its rail milepost origination and termination points and one or more of the following:

(1) Reference to a map, deed, or other title instrument.

(2) Metes and bounds.

(3) General descriptions referring to natural boundaries, boundaries of existing political subdivisions, or boundaries of tracts or parcels of land.

"§ 160A-883. Creation and expansion of Authority.

(a) Resolution of Creation. – An Authority may be organized under the provisions of this Article upon the adoption of a resolution to create such an Authority by the boards of commissioners of all three or more counties within an area for which an Authority may be created pursuant to G.S. 160A-882(a) and the elected board of each municipality containing a portion of the rail corridor.

(b) Public Hearing. – A resolution to form an Authority under this Article shall be adopted after a public hearing. Notice of the public hearing must be given at least once, not less than 10 days prior to the date fixed for the hearing, in a newspaper having a general circulation in the county. The notice must contain a brief statement of the substance of the proposed resolution, a description of the rail corridor to be controlled, purchased, or otherwise operated by the Authority, the proposed articles of incorporation of the Authority, and the time and place of the public hearing.

(c) Articles of Incorporation. – A resolution to form an Authority under this Article must include articles of incorporation that set forth all of the following:

(1) The name of the Authority.

(2) A statement that the Authority is organized under this Article.

(3) The name of each organizing entity.

(d) Certificate of Incorporation. – A certified copy of each resolution organizing an Authority under the provisions of this Article shall be filed with the Secretary of State, together with proof of publication of the notice of hearing. If the Secretary of State finds that each resolution, including the articles of incorporation, conform to the provisions of this Article and that the notice of hearing was properly published, then the Secretary must issue a certificate of incorporation under the seal of the State and record the same in an appropriate book of record. The issuance of the certificate of incorporation by the Secretary of State shall constitute the Authority a public body and body politic and corporate of the State of North Carolina. The certificate of incorporation is conclusive evidence of the fact that the Authority has been duly created and established under the provisions of this Article.

(e) Resolution to Join. – If, at any time subsequent to the creation of an Authority, the Authority proposes or otherwise intends to extend the rail corridor into a county or municipality that is not already an organizing entity of the Authority, that county or municipality may join the Authority under the provisions of this Article upon the adoption of a resolution to join by the elected board of the county or municipality. A resolution to join an Authority under this Article shall be adopted after a public hearing. Notice of the public hearing must be given at least once, not less than 10 days prior to the date fixed for the hearing, in a newspaper having a general

1 circulation in the county. The notice must contain a brief statement of the substance of the
2 proposed resolution, a description of the rail corridor to be controlled, purchased, or otherwise
3 operated by the Authority, the proposed articles of incorporation of the Authority as updated to
4 include the new organizing entity, and the time and place of the public hearing. A certified copy
5 of each resolution to join an Authority under the provisions of this Article shall be filed with the
6 Secretary of State, together with proof of publication of the notice of hearing. If the Secretary of
7 State finds that the resolution, including the updated articles of incorporation, conform to the
8 provisions of this Article and that the notice of hearing was properly published, then the Secretary
9 of State must issue an updated certificate of incorporation under the seal of the State and record
10 the same in an appropriate book of record. The updated certificate of incorporation is conclusive
11 evidence of the fact that the Authority has been duly updated under the provisions of this Article.

12 (f) Members. – When the Authority has been duly organized or updated and its members
13 appointed to the Board of Trustees, the chair of the Board of Trustees shall certify to the Secretary
14 of State the names and addresses of the members as well as the address of the principal office of
15 the Authority.

16 (g) Members Not Liable. – No member of the Board of Trustees shall be subject to any
17 personal liability or accountability by reason of their execution of any bonds or notes or the
18 issuance of any bonds or notes.

19 (h) Compensation of the Board of Trustees. – Members of the Board of Trustees shall
20 receive the sum of fifty dollars (\$50.00) as compensation for the attendance at each duly
21 conducted meeting of the Authority.

22 (i) The Authority shall, promptly following the close of each fiscal year, submit an
23 annual report of its activities for the preceding year to the Governor, the General Assembly, and
24 the Local Government Commission. Each report shall be accompanied by an audit of its books
25 and accounts. The costs of all audits, whether conducted by the State Auditor's staff or contracted
26 with a private auditing firm, shall be paid from funds of the Authority. The Authority shall submit
27 quarterly reports to the Joint Legislative Commission on Governmental Operations. The reports
28 shall summarize the Authority's activities during the quarter and contain any information about
29 the Authority's activities that is requested by the Commission.

30 **"§ 160A-884. Board of Trustees.**

31 (a) Members. – The Authority shall be governed by a Board of Trustees and consist of
32 one member for each organizing entity having adopted a resolution for the creation of or a
33 resolution to join the Authority under G.S. 160A-883, and one member for each regional council
34 of government, as created pursuant to Part 2 of Article 20 of Chapter 160A of the General
35 Statutes, containing a portion of the rail corridor.

36 (b) Appointment. – The Board of Trustees seats held by each member of the organizing
37 entities having adopted a resolution for the creation of or a resolution to join the Authority shall
38 be filled by the respective unit of local government's chief administrative official or its designee.
39 The Board of Trustees seats held by each regional council of government containing a portion of
40 the rail corridor shall be held by the Executive Director of that council or the Executive Director's
41 designee.

42 (c) Ex Officio. – Any unit of local government's chief administrative official serving on
43 the Board of Trustees is an ex officio voting member as part of the duties of their office in
44 accordance with G.S. 128-1.2 and not considered to be serving in a separate office.

45 (d) Ethics. – Members of the Board of Trustees are subject to the provisions of
46 G.S. 136-13, 136-13.1, and 136-14.

47 (e) Quorum. – A majority of the membership of the Board of Trustees, excluding vacant
48 seats, shall constitute a quorum. A member who has withdrawn from a meeting without being
49 excused by a majority vote of the remaining members present shall be counted as present for the
50 purposes of determining whether or not a quorum is present. No member shall be excused from
51 voting except upon matters involving the consideration of the members own financial interest or

official conduct or on matters on which the member is prohibited from voting under any other provision of law.

(f) Action. – An affirmative vote equal to a majority of all members of the Board of Trustees not excused from voting on the question at issue shall be required to authorize or commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of the Authority.

(g) Chair and Vice-Chair of the Board of Trustees. – At the first meeting of the Board of Trustees, the chair of the Board of Trustees shall be elected from the Board of Trustees' membership by a majority vote of a quorum of the Board of Trustees. Also, at the first meeting of the Board of Trustees, and from the remaining Board of Trustees' membership not elected as chair, a vice-chair of the Board of Trustees shall be elected by a majority vote of a quorum of the Board of Trustees to fulfill the roles and duties of the chair of the Board of Trustees in the chair's absence. The terms of the chair and vice-chair so elected shall be for three years with no limit on the number of consecutive terms for which the chair or vice-chair may serve.

(h) Vacancies. – All members of the Board of Trustees shall remain in office unless (i) a unit of local government's chief administrative official no longer holds that office in its respective government, (ii) a unit of local government's chief administrative official replaces its designee, (iii) the Executive Director of the regional council of government no longer holds the office of Executive Director of the council, or (iv) the Executive Director of the council replaces its designee. A vacancy for the chair of the Board of Trustees shall be filled by the vice-chair for the remainder of the applicable three-year term, and a special election for a replacement vice-chair shall occur at the next Board of Trustees meeting pursuant to the procedure set out in subsection (g) of this section. A vacancy of the vice-chair shall prompt a special election for a replacement vice-chair at the next Board of Trustees meeting pursuant to the procedure set out in subsection (g) of this section.

"§ 160A-885. Advisory committees.

The Board of Trustees may provide for the selection of such advisory committees as it may find appropriate, which may or may not include members of the Board of Trustees.

"§ 160A-886. Rail Transportation Corridor Authority.

(a) The Authority shall have all powers necessary to execute the provisions of this Article, which shall include at least the following powers:

- (1) The powers of a corporate body, including the power to sue and be sued, to make contracts, to adopt and use a common seal, and to alter the adopted seal as needed.
- (2) To make rules and regulations and create and operate agencies, committees, and departments as needed to implement this Article.
- (3) To pay all necessary costs and expenses in the formation, organization, administration, and operation of the Authority.
- (4) To employ persons deemed necessary to carry out the functions and duties assigned to them by the Authority and to fix their compensation within the limit of available funds.
- (5) To retain and employ counsel, appraisers, auditors, architects, engineers, private consultants, and real estate counselors on an annual salary, contract basis, or otherwise for rendering professional or technical services from funds available to the Authority.
- (6) To operate a rail corridor and enter and perform contracts to provide and operate rail and rail corridor services and facilities within the rail corridor service area.
- (7) To charge and collect fees and rents for the use of the rail corridor or for services rendered in the operation of the rail corridor.

- (8) To develop and make data, plans, information, surveys, and studies within the territorial jurisdiction of the Authority and to prepare and make recommendations in regard thereto.
- (9) To enter in a reasonable manner lands, waters, or premises of the territorial jurisdiction for the purpose of making data, examinations, plans, surveys, and studies whereby such entry shall not be deemed a trespass except that the Authority shall be liable for any actual and consequential damages resulting from such entries.
- (10) To purchase or finance real or personal property in the manner provided for cities and counties under G.S. 160A-20.
- (11) To acquire, lease as lessee with or without option to purchase, hold, own, and use any property within the rail corridor service area, real or personal, tangible or intangible, or any interest therein, and to sell, lease as lessor with or without option to purchase, transfer, or dispose thereof, whenever the same is no longer required for purposes of the Authority, or exchange same for other property or rights that are useful for the Authority's purposes, including construction of bridges, buildings, cargo transfer systems, culverts, facilities, industrial track, main track, mass transit systems, maintenance yards, marshalling yards, rights-of-way, roadbed, sidings, structures, transfer yards, tunnels, and all other railroad appurtenances. Before constructing a bridge, the Authority shall consult with the Department of Transportation.
- (12) To acquire by gift, purchase, lease as lessee with or without option to purchase or otherwise to construct, improve, maintain, repair, operate, or administer any component parts of a rail corridor or to contract for the maintenance, operation, or administration thereof, or to lease as lessor the same for maintenance, operation, or administration by private parties.
- (13) To make or enter contracts, agreements, deeds, leases with or without option to purchase, conveyances, or other instruments, including contracts and agreements with the United States, the State of North Carolina, units of local government, public transportation authorities, and private parties, to effectuate the purpose of this Article.
- (14) With the consent of the unit of local government that would otherwise have jurisdiction to exercise the powers enumerated in this subdivision, to issue certificates of public convenience and necessity, and to grant franchises and enter into franchise agreements, and in all respects to regulate the operation of rail, buses, trams, taxicabs, and other methods of public transportation that originate and terminate within the rail corridor as fully as the unit of local government is now or hereafter empowered to do within the jurisdiction of the unit of local government.
- (15) To issue bonds and bond anticipation notes under the Local Government Revenue Bond Act, Articles 5 and 9 of Chapter 159 of the General Statutes for the purpose of acquiring, constructing, improving, maintaining, operating, or financing a rail corridor, rail corridor project, or any part thereof and to refund, whether or not in advance of maturity or the earliest redemption date, any such bonds or notes. As provided in G.S. 159-94, the principal of and interest on the bond is payable solely from the revenues pledged to its payment and neither the State nor the municipality is obligated to pay the principal or interest, except from such revenues.
- (16) To apply for, accept, and administer loans and grants of money from any federal agency, the State, or its political subdivisions, or from any other public or private sources available, to expend the money in accordance with the

requirements imposed by the lender or donor, and to give any evidence of indebtedness that are required. No indebtedness of any kind incurred or created by the Authority shall constitute an indebtedness of the State or its political subdivisions, and no indebtedness of the Authority shall involve or be secured by the faith, credit, or taxing power of the State or its political subdivisions.

(b) To execute the powers provided in subsection (a) of this section, the Board of Trustees shall determine the policies of the Authority by majority vote of the members of the Board of Trustees present and voting, a quorum having been established. Once a policy is determined, the Board of Trustees shall communicate it to the chair, who shall have the sole and exclusive authority to execute the policy of the Authority. No member of the Board of Trustees shall have the responsibility or authority to give operational directives to any employee of the Authority other than the chair.

"§ 160A-887. Fiscal accountability.

An Authority created under this Article is a public authority subject to the provisions of Chapter 159 of the General Statutes.

"§ 160A-888. Funds.

The establishment and operation of an Authority are governmental functions and constitute a public purpose, and the State of North Carolina and any unit of local government may appropriate funds to support the establishment and operation of the Authority. The State of North Carolina and any unit of local government may also dedicate, sell, convey, donate, or lease any of their interests in any property to the Authority. An Authority may apply for grants from the State of North Carolina, or from the United States or any department, agency, or instrumentality thereof. The Department of Transportation may allocate to an Authority any funds appropriated for rail corridors, public transportation, or any funds whose use is not restricted by law.

"§ 160A-889. Public hearing and approval requirements.

(a) To the extent federal tax law requires public hearings to be held with respect to the issuance of bonds to finance a rail corridor project or special user project, the hearings may be called for by the chair and must be held before one or more members of the Board of Trustees. The hearings may be held at any place within the territorial jurisdiction of the Authority pursuant to public notice given in accordance with current federal tax regulations.

(b) To the extent federal tax law requires approval following the hearing of the issuance of bonds to finance a rail corridor project or special user project and except as otherwise provided under federal tax regulations, approval shall be sought from, and the chair of the Board of Trustees shall report the results of the public hearing accompanied by information relating to the purposes for the proposed bond issue to the following:

(1) For host approval, the (i) elected board of county commissioners of an organizing entity of the Authority for each county in which a financed project is partially located or (ii) an at-large, elected official of the board of county commissioners for each county in which a financed project is partially located.

(2) For issuer approval, the organizing entities of the Authority may, by mutual agreement, specify either of the following as an "applicable elected representative," as defined in 26 U.S.C. § 147(f)(2), of the Authority and authorize such applicable elected representative to approve the issuance of bonds on behalf of the Authority for the purposes of 26 U.S.C. § 147(f)(2)(A)(i):

a. The elected governing board of an organizing entity of the Authority.

b. An at-large, elected official of the governing board of an organizing entity of the Authority.

"§ 160A-890. Special user project bonds or notes.

(a) The Authority may provide for the issuance, at one time or from time to time, of bonds and notes, including bond anticipation notes and renewal notes, of the Authority to finance or refinance special user projects. The principal of and interest on the bonds or notes shall be solely payable from funds provided under this Article for their payment. A bond anticipation note may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, from any available Authority revenues or other funds provided for this purpose. Bonds and notes may also be paid from the proceeds of any credit facility. Bonds and notes to finance or refinance special user projects may be sold irrespective of the interest limitations in G.S. 24-1.1.

The bonds and notes of each issue shall be dated and may be made redeemable prior to maturity at the option of the Authority or otherwise, at one or more prices, on one or more dates, and upon the terms and conditions set by the Authority. The bonds or notes may also be made payable from time to time on demand or tender for purchase by the owner upon terms and conditions set by the Authority.

A bond or note shall bear interest at a rate or rates, including variable rates, as determined by the Local Government Commission with the approval of the Authority. A bond or note may be secured by a reserve fund created for that purpose and funded from proceeds of the bond or note, revenues, or any other source of funds available to the Authority.

(b) The Authority may issue refunding bonds or notes for the purpose of refunding any outstanding bonds or notes issued under this section for special user projects, including any redemption premium on the bonds or notes and any interest accrued or to accrue to the date of redemption. Refunding bonds or notes shall be issued in accordance with the same procedures and requirements as bonds or notes. Refunding bonds or notes may be sold or exchanged for outstanding bonds and notes issued under this section.

Refunding bonds or notes may have different interest rates and maturities than the bonds or notes being refunded. The proceeds of refunding bonds or notes may be applied to any of the following:

- (1) The payment, purchase, and retirement of the bonds or notes being refunded by direct application to the payment, purchase, and retirement.
- (2) The payment, purchase, and retirement of the bonds or notes being refunded by the deposit in trust of the proceeds.
- (3) The payment of any expenses incurred in connection with the refunding.
- (4) For any other uses not inconsistent with the refunding.

(c) The proceedings providing for the issuance of refunding bonds or notes may limit the investments in which the proceeds of a particular refunding issue may be invested. Unless prohibited by the proceedings, the proceeds of refunding bonds or notes that are deposited in trust for the payment, purchase, and retirement of outstanding bonds or notes may be invested in any of the following:

- (1) Direct obligations of the United States of America.
- (2) Obligations whose principal and interest are guaranteed by the United States of America.
- (3) Evidence of ownership of a proportionate interest in an obligation that is described in subdivision (1) or (2) of this subsection and is held in a custodial capacity by a bank or trust company organized under the laws of the United States of America or a state.
- (4) Obligations of the State or a unit of local government of the State when payment of the principal of and interest on the obligations has been provided for by depositing with a trustee or other escrow agent obligations that meet all of the following:
 - a. Are described in subdivision (1), (2), or (3) of this subsection.

- 1 b. When due and payable, will provide enough money when added to any
2 other money held in trust for this purpose to pay the principal of,
3 premium, if any, and interest on the State or local obligations.
4 c. Are rated in the highest category by Standard & Poor's Corporation
5 and Moody's Investors Service, Inc.
6 (5) Obligations of the State or a unit of local government when payment of the
7 principal and interest on the obligations is insured by a bond insurance
8 company rated in the highest category by Standard & Poor's Corporation and
9 Moody's Investors Service, Inc.
10 (6) Full faith and credit obligations of the State or a unit of local government of
11 the State that are rated in the highest category by Standard & Poor's
12 Corporation and Moody's Investors Service, Inc.
13 (7) Any obligations or investments in which the State Treasurer is then authorized
14 to invest funds of the State.
15 (d) This section does not limit any of the following:
16 (1) The period for which the proceeds of refunding bonds or notes may be held in
17 trust to retire the bonds or notes that are being refunded and have not matured,
18 are not redeemable, or, if redeemable, have not been called for redemption.
19 (2) The power to issue bonds or notes for the combined purpose of refunding
20 outstanding bonds or notes and of providing funds for any other corporate
21 purpose.
22 (e) Bonds and notes issued under this section may be secured by one or more agreements,
23 including foreclosable deeds of trust and other trust instruments. An agreement may pledge and
24 assign to the trustee or the holders of its obligations the assets, revenues, and income provided
25 for the security of the bonds or notes, including proceeds from the sale of any special user project
26 or part thereof, insurance proceeds, condemnation awards, and third-party agreements, and may
27 convey or mortgage the special user project and other property and collateral to secure a bond
28 issue.
29 The Authority may subordinate the bonds or notes or its rights, assets, revenues, and income
30 derived from any special user project to any prior, contemporaneous, or future securities or
31 obligations or lien, mortgage, or other security interest.
32 (f) Notwithstanding any other provision of law, the Authority may agree that all contracts
33 relating to the acquisition, construction, installation, and equipping of the special user project
34 shall be solicited, negotiated, awarded, and executed by the private parties for which the
35 Authority is financing the special user project or any agents of the private parties subject only to
36 approval by the Authority as the Authority may require. The Authority may, out of the proceeds
37 of bonds or notes, make advances to or reimburse the private parties or their agents for all or a
38 portion of the costs incurred in connection with the contracts.
39 (g) In fixing the details of bonds or notes, the Authority may provide that the bonds or
40 notes may be:
41 (1) Payable from time to time on demand or tender for purchase by the owner of
42 the bond or note if a credit facility supports the bond or note, unless the Local
43 Government Commission specifically determines that a credit facility is not
44 required because the absence of a credit facility will not materially and
45 adversely affect the financial position of the Authority and the marketing of
46 the bonds or notes at a reasonable interest cost to the Authority.
47 (2) Additionally supported by a credit facility.
48 (3) Made subject to redemption or a mandatory tender for purchase prior to
49 maturity.
50 (4) Capital appreciation bonds.

(5) Interest bearing at a rate or rates that may vary, including variations permitted pursuant to a par formula.

(6) Made the subject of a remarketing agreement whereby an attempt is made to remarket the bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the Authority.

(h) Notes and bonds shall mature at the times determined by the Authority, not to exceed 40 years from the date of issue. The Authority shall determine the form and manner of execution of a bond or note, including any interest coupons to be attached to the bond or note. The Authority shall fix the denominations and places of payment of principal and interest of the bond or note. The principal of and interest on a bond or note may be paid at any bank or trust company, whether located inside or outside the United States of America.

(i) The validity of a bond, note, or coupon that has the signature or facsimile signature of a person who was an officer when the bond, note, or coupon was signed or the facsimile signature attached but who is not that officer when the bond, note, or coupon is delivered is not affected by the change in officers. A bond, note, or coupon may bear the signature or facsimile signature of a person who will be the proper officer to sign the bond, note, or coupon when it is executed but who is not the officer on the issuance date of the bond, note, or coupon.

(j) The Authority may provide for any of the following:

(1) Authentication of a bond or note by a trustee or other authenticating agent.

(2) Issuance of a bond or note as a certificated obligation, an uncertificated obligation, or both.

(3) Issuance of a bond or note in coupon form, in registered form, or both.

(4) Registration of a coupon bond or note as to principal alone or as to both principal and interest.

(5) The reconversion of a bond or note registered as to both principal and interest into a coupon bond or note.

(6) The interchange of registered and coupon bonds or notes.

(7) A system for registration in accordance with Chapter 159E of the General Statutes.

(8) Replacement of a bond or note that has been mutilated, lost, or destroyed.

(k) The Authority may not issue a bond or note under this section unless its issuance is approved by the Local Government Commission and it is sold by the Local Government Commission. To obtain approval of a bond or note, the Authority shall file an application for approval with the Local Government Commission. The application shall contain the information required by the Local Government Commission.

In determining whether to approve a proposed bond or note issue of the Authority to finance a special user project, the Local Government Commission shall consider the criteria used for its approval of industrial bonds under G.S. 159C-8(b) and (d) and the effect of the proposed financing upon any proposed or scheduled sale of obligations by the State, another State agency, or a unit of local government. The Local Government Commission shall approve the proposed bond or note issue if it determines that the proposed financing for the issue meets the criteria and will effectuate the purposes of this Article.

When the Local Government Commission approves a bond or note issue of the Authority, the Authority may submit a written request to the Local Government Commission to sell the approved bonds or notes. Upon receiving a written request, the Local Government Commission shall consult with the Authority on the way the bonds or notes will be sold and the price or prices at which the bonds or notes will be sold. With the approval of the Authority, the Local Government Commission shall sell the bonds or notes either at public or private sale in the manner and at the prices determined to be in the best interest of the Authority and to effectuate the purposes of this Article.

Bonds or notes may be issued under this section without obtaining, except as otherwise expressly provided in this section, the consent of any department, division, commission, board, body, bureau, or other agency of the State or without any other proceedings or conditions except as specifically authorized by this section or by the provisions of the resolution of the Authority authorizing the issuance of, or any trust agreement securing, the bonds or notes.

(l) Each bond or note that is represented by an instrument shall contain a statement signed by the Secretary of the Local Government Commission, or an assistant designated by the Secretary, certifying that the issuance of the bond or note has been approved under this section. The signature may be a manual signature or a facsimile signature, as determined by the Local Government Commission. Each bond or note that is not represented by an instrument shall be evidenced by a writing relating to the obligation that identifies the obligation or the issue of which it is a part, contains the signed statement certifying approval of the Local Government Commission that is required on an instrument, and is filed with the Local Government Commission. A certification of approval by the Local Government Commission is conclusive evidence that a bond or note complies with this section.

(m) The proceeds of a bond or note shall be used solely for the purposes for which the bond or note was issued and shall be disbursed in accordance with the resolution of the Authority authorizing the issuance of the bond or note and with any trust agreement securing the bond or note.

(n) Prior to the preparation of definitive bonds, the Authority may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when the bonds have been executed and are available for delivery.

(o) The Authority may secure a bond or note issued under this section by a trust agreement between the Authority and a corporate trustee. The corporate trustee may be any trust company or bank having the powers of a trust company inside or outside the State. The Authority may secure a bond or note issued under this section by a deed of trust. The trustee of the deed of trust may be an individual who is a resident of the State. A bank or trust company that is incorporated in this State and is a depository of the proceeds of obligations, revenues, or other money of an Authority may furnish indemnifying bonds or pledge securities required by the Authority.

The pledge of any assets, income, or revenues of the Authority to the payment of the principal of or the interest on any obligations of the Authority is binding from the time the pledge is made, and any assets, income, or revenues of the Authority are immediately subject to the lien of the pledge without any physical delivery or other act. The lien created by a pledge is binding against all persons who have claims of any kind against the Authority, regardless of whether they have notice of the lien.

(p) A resolution of the Authority authorizing the issuance of a bond or note and a trust agreement securing a bond or note may provide that any moneys held under the resolution or trust agreement may be temporarily invested pending disbursement. Any officer with whom, or any bank or trust company with which, the moneys are deposited is considered a trustee of the moneys and must hold and apply the moneys for their stated purpose in accordance with this section and the resolution or trust agreement. The proceeds of bonds issued to finance special user projects may be invested as provided in the security document for the bonds.

In connection with or incidental to the acquisition or carrying of any investment relating to bonds, program of investment relating to bonds, or carrying of bonds, the Authority may, with the approval of the Local Government Commission, enter into a contract to place the investment or obligation of the Authority, as represented by the bonds, investment, or program of investment and the contract or contracts, in whole or in part, on an interest rate, currency, cash-flow, or other basis, including the following:

(1) Interest rate swap agreements, currency swap agreements, insurance agreements, forward payment conversion agreements, and futures.

- (2) Contracts providing for payments based on levels of, or changes in, interest rates, currency exchange rates, or stock or other indices.
- (3) Contracts to exchange cash flows or a series of payments.
- (4) Contracts to hedge payment, currency, rate, spread, or similar exposure, including interest rate floors or caps, options, puts, and calls.

The Authority may enter a contract of this type in connection with, or incidental to, entering or maintaining any agreement that secures bonds. A contract shall contain the payment, security, term, default, remedy, and other terms and conditions the Board considers appropriate. The Authority may enter a contract of this type with any person after giving due consideration, where applicable, of the person's credit-worthiness as determined by a rating by a nationally recognized rating agency or any other criteria the Board considers appropriate. In connection with, or incidental to, the issuance or carrying of bonds, or the entering of any contract described in this subsection, the Authority may enter into credit enhancement or liquidity agreements, with payment, interest rate, termination date, currency, security, default, remedy, and other terms and conditions as the Authority determines. Proceeds of bonds and any moneys set aside and pledged to secure payment of bonds or any of the contracts entered under this subsection may be pledged to and used to service any of the contracts entered into under this section.

(q) Bonds and notes are exempt from all State, county, and municipal taxation, or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding income taxes on the gain from the transfer of bonds and notes, and franchise taxes. The interest on bonds and notes is not subject to taxation as income.

(r) Bonds or notes issued by the Authority under this section shall not constitute a debt secured by a pledge of the faith and credit of the State or a political subdivision of the State and are special, limited obligations of the Authority payable solely from the following:

- (1) The Authority's revenues, income, or assets that it specifically assigns or pledges for payment.
- (2) The funds, collateral, and undertakings of a private party that are assigned or pledged by that party.

The face of each bond or note issued shall contain a statement indicating the (i) Authority's revenues, income, or assets assigned or pledged for payment, (ii) the private party's funds, collateral, or undertakings that are assigned or pledge by that party, and (iii) that neither the faith and credit nor the taxing power of the State or any political subdivision of the State is pledged in payment of the principal of or the interest on the bond or note.

(s) The State pledges to the holder of a bond or note issued under this section that, as long as the bond or note is outstanding and unpaid, the State will not limit or alter the power the Authority had when the bond or note was issued in a way that impairs the ability of the Authority to produce revenues sufficient with other available funds to do all of the following:

- (1) Maintain and operate the special user project for which the bond or note was issued.
- (2) Pay the principal of, interest on, and redemption premium, if any, of the bond or note.
- (3) Fulfill the terms of an agreement with the holder.

The State further pledges to the holder of a bond or note issued under this section that the State will not impair the rights and remedies of the holder concerning the bond or note.

(t) Obligations issued under this section are made securities in which all public officers and public bodies of the State and its political subdivisions, and all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. The obligations are made securities that may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the

State for any purpose for which the deposit of bonds, notes, or obligations of the State is now or may be authorized by law.

(u) All bonds and notes and interest coupons, if any, issued under this section are made investment securities within the meaning of and for the purposes of Article 8 of the Uniform Commercial Code, as enacted in Chapter 25 of the General Statutes.

"§ 160A-891. Special user project financing agreement.

(a) Every special user project financing agreement shall contain provisions ensuring all of the following:

(1) That the amounts payable under the financing agreement are sufficient to pay, when due, the principal of, redemption premium, if any, and interest on the bonds issued to pay the costs of the special user project.

(2) That the operator pays all costs incurred by the Authority in connection with the financing and administration of the special user project, except costs paid out of the proceeds of bonds or otherwise, including, but without limitation, insurance costs, the cost of administering the financing agreement and the security document, and the fees and expenses of the fiscal agent or trustee, paying agents, attorneys, consultants, and others.

(3) That the operator pays all the costs and expenses of operation, maintenance, and upkeep of the special user project.

(4) That the operator's obligation to provide for the payment of the bonds in full is not subject to cancellation, termination, or abatement until the payment of the bonds or provision for their payment is made.

(b) The financing agreement, if in the nature of a lease agreement, shall either provide that the obligor shall have an option to purchase, or require that the obligor purchase, the special user project upon the expiration or termination of the financing agreement subject to the condition that payment in full of the principal of, and the interest and any redemption premium on, the bonds, or provision therefor, shall have been made.

(c) The financing agreement may provide the Authority with rights and remedies in the event of a default by the obligor, including, without limitation, any one or more of the following:

(1) Acceleration of all amounts payable under the financing agreement.

(2) Reentry and repossession of the special user project.

(3) Termination of the financing agreement.

(4) Leasing or sale of foreclosure of the special user project to others.

(5) Taking whatever actions at law or in equity may appear necessary or desirable to collect the amounts payable under, and to enforce covenants made in, the financing agreement.

(d) The Authority's interest in a special user project under a financing agreement may be that of owner, lessor, lessee, conditional or installment vendor, mortgagor, mortgagee, secured party, or otherwise, but the Authority need not have any ownership or possessory interest in the special user project.

(e) The Authority may assign all or any of its rights and remedies under the financing agreement to the trustee or the bondholders under a security document.

(f) The financing agreement may contain additional provisions as in the determination of the Board of Trustees are necessary or convenient to effectuate the purposes of this Article. When, as provided in G.S. 160A-890, the Local Government Commission approves the issuance of bonds by the Authority, the Commission shall also approve all financing agreements and security documents.

"§ 160A-892. Special user project security document.

Bonds issued under the provisions of G.S. 160A-890 may be secured by a security document which may be a trust instrument between the Authority and a bank or trust company or individual within the State, or a bank or a trust company outside the State, as trustee. The security document

1 may pledge and assign the revenues provided for the security of the bonds, including proceeds
2 from the sale of any special user project, or part thereof, insurance proceeds and condemnation
3 awards, and may convey or mortgage the special user project and other property to secure a bond
4 issue.

5 The revenues and other funds derived from the special user project, except for any part as
6 may be necessary to provide reserves therefor, if any, may be set aside at regular intervals as may
7 be provided in the security document in a sinking fund which may be pledged to, and charged
8 with, the payment of the principal of and the interest on the bonds as the same shall become due
9 and the redemption price or the purchase price of bonds retired by call or purchase as provided.
10 The pledge shall be valid and binding from the time when the pledge is made. The revenues
11 pledged and received by the Authority shall immediately be subject to the lien of the pledge
12 without any physical delivery or further act, and the lien of any pledge shall be valid and binding
13 as against all parties having claims of any kind in tort, contract or otherwise against the Authority,
14 irrespective of whether the parties have notice. The use and disposition of money to the credit of
15 the sinking fund shall be subject to the provisions of the security document. The security
16 document may contain provisions for protecting and enforcing the rights and remedies of the
17 bondholders as may be reasonable and proper and not in violation of law, including, without
18 limitation, any one or more of the following:

- 19 (1) Acceleration of all amounts payable under the security document.
- 20 (2) Appointment of a receiver to manage the special user project and any other
21 property mortgaged or assigned as security for the bonds.
- 22 (3) Foreclosure and sale of the special user project and any other property
23 mortgaged or assigned as security for the bonds.
- 24 (4) Rights to bring and maintain such other actions at law or in equity as may
25 appear necessary or desirable to collect the amounts payable under, or to
26 enforce the covenants made in, the security document.

27 It shall be lawful for any bank or trust company incorporated under the laws of this State
28 which may act as depository of the proceeds of bonds, revenues, or other funds provided under
29 G.S. 160A-890 to furnish indemnifying bonds or to pledge securities as may be required by the
30 Authority. All expenses incurred in carrying out the provisions of the security document may be
31 treated as a part of the cost of the special user project in connection with which bonds are issued
32 or as an expense of administration of the special user project.

33 The Authority may subordinate the bonds or its rights under the security document or
34 otherwise to any prior, contemporaneous, or future securities or obligations or lien, mortgage, or
35 other security interest.

36 **"§ 160A-893. County and municipal agreements.**

37 Any county or municipality in which all or part of the rail corridor is located may enter into
38 an agreement with the Authority providing for payments to be made by the county or
39 municipality, as applicable, to the Authority. A county or municipality may not enter into an
40 agreement to make payments to the Authority until after the Authority designates the rail
41 corridor. Neither the county nor municipality's obligations under the agreement shall constitute
42 a pledge of its faith and credit. The Authority has the power and authorization to enter into
43 agreements with such local governments as provided in the Interlocal Cooperation Act,
44 G.S. 160A-460 through G.S. 160A-466.

45 **"§ 160A-894. Remedies.**

46 Any owner of bonds or notes issued under the provisions of this Article or any coupons
47 appertaining thereto, and the trustee under any trust agreement securing or resolution authorizing
48 the issuance of such bonds or notes, except to the extent the rights given may be restricted by the
49 trust agreement or resolution, may either at law or in equity, by suit, action, mandamus, or other
50 proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder
51 or under the trust agreement or resolution, or under any other contract executed by the Authority

pursuant to this Article; and may enforce and compel the performance of all duties required by this Article or by the trust agreement or resolution by the Authority or by any officer of the Authority.

"§ 160A-895. Taxation of property.

The property of the Authority, both real and personal, its acts, activities, and income shall be exempt from any tax or tax obligation; in the event of any lease of Authority property, or other arrangement which amounts to a leasehold interest, to a private party, this exemption shall not apply to the value of such leasehold interest, nor shall it apply to the income of the lessee. Otherwise, however, for the purpose of taxation, when property of the Authority is leased to private parties solely for the purpose of the Authority, the acts and activities of the lessee shall be considered as the acts and activities of the Authority and the exemption. The interest on bonds or obligations issued by the Authority shall be exempt from State taxes. Property that is part of or is located on the rail corridor and is not owned by the Authority, including property that is part of a special user project, is not exempt from tax due to its location.

"§ 160A-896. Authority of Utilities Commission not affected.

(a) Except as otherwise provided in this Article, nothing in this Article shall be construed to limit or otherwise affect the power or authority of the North Carolina Utilities Commission or the right of appeal to the North Carolina Utilities Commission as provided by law.

(b) The North Carolina Utilities Commission shall not have jurisdiction over rates, fees, charges, routes, and schedules of an Authority for service within the rail corridor.

"§ 160A-897. Removal and relocation of utility structures.

(a) The Authority shall have the power to require any public utility, railroad, or other public service corporation owning or operating any installations, structures, equipment, apparatus, appliances, or facilities in, upon, under, over, across, or along any ways on which the Authority has the right to own, construct, operate, or maintain its rail corridor, to relocate such installation, structures, equipment, apparatus, appliances, or facilities from their locations, or, in the sole discretion of the affected public utility, railroad, or other public service corporation, to remove such installations, structures, equipment, apparatus, appliances, or facilities from their locations.

(b) If the owner or operator thereof fails or refuses to relocate them, the Authority may proceed to do so.

(c) The Authority shall provide any necessary new locations and necessary real estate interests for such relocation, and for that purpose the power of eminent domain as provided in G.S. 160A-898 may be exercised provided the new locations shall not be in, on, or above, a public highway; the Authority may also acquire the necessary new locations by purchase or otherwise.

(d) Any affected public utility, railroad, or other public service corporation shall be compensated for any real estate interest taken in a manner consistent with G.S. 160A-898, subject to the right of the Authority to reduce the compensation due by the value of any property exchanged under this section.

(e) The method and procedures of a particular adjustment to the facilities of a public utility, railroad, or other public service corporation shall be covered by an agreement between the Authority and the affected party or parties.

(f) The Authority shall reimburse the public utility, railroad, or other public service corporation, for the cost of relocations or removals which shall be the entire amount paid or incurred by the utility properly attributable thereto after deducting the cost of any increase in the service capacity of the new installations, structures, equipment, apparatus, appliances, or facilities and any salvage value derived from the old installations, structures, equipment, apparatus, or appliances.

"§ 160A-898. Acquisition, disposition, or exchange of real property.

(a) The Authority shall have continuing power to acquire, by gift, grant, devise, exchange, purchase, lease with or without option to purchase, or any other lawful method, including, but not limited to, the power of eminent domain, the fee or any lesser interest in real or personal property for use by the Authority.

(b) Exercise of the power of eminent domain by the Authority shall be in accordance with Chapter 40A of the General Statutes.

(c) Exchange. – The Authority may exchange any property it acquires for other property usable in carrying out the powers conferred on the Authority and also, upon the payment of just compensation, may remove a building or another structure from land needed for its purposes and reconstruct the structure on another location. The Authority may not use the power of eminent domain to acquire property for exchange.

(d) Site Selection. – In selecting one or more sites for adjoining rail facilities or property for shell or storage buildings, the Authority shall consider comprehensive plans and land-use regulations adopted by local governments and the capability of local governments to provide services as specified in subdivisions (1) through (3) of this subsection. This subsection shall not be construed to require the Authority to comply with any local ordinance, regulation, or plan except as may be otherwise specifically provided by federal or State law, regulation, or rule. Plans, regulations, and capabilities to be considered are:

(1) Local comprehensive plans, including education, emergency response, law enforcement, water supply, stormwater management, solid waste management, and wastewater treatment.

(2) Local land use regulations, including appearance, floodplain zoning, subdivision zoning, and watershed protection elements.

(3) The capability of local governments to provide services and manage growth and development related to the establishment of the rail corridor.

"§ 160A-899. Termination.

Whenever the Board of Trustees shall by resolution determine that the purposes for which the Authority was formed have been substantially fulfilled and that all bonds issued and all other obligations incurred by the Authority have been fully paid or satisfied, the Board may declare the Authority to be dissolved. On the effective date of the resolution, the title to all funds and other property owned by the Authority at the time of the dissolution shall vest in and possession of the funds and other property shall be delivered to the State."

SECTION 15.1.(b) G.S. 160A-20 reads as rewritten:

"§ 160A-20. Security interests.

...

(h) Local Government Defined. – As used in this section, the term "unit of local government" means any of the following:

...

(16) A Rail Transportation Corridor Authority created pursuant to Article 33 of this Chapter."

SECTION 16.1. Except as otherwise provided, this act is effective when it becomes law.