

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 235
SENATE BILL 682

AN ACT TO ALLOW THE COUNTIES OF CALDWELL AND CATAWBA AND
THE CITIES OF GRANITE FALLS, HUDSON, HICKORY, LENOIR, AND
SAWMILLS TO ESTABLISH THE CAROLINA AND NORTHWESTERN
RAILROAD AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. (a) The Counties of Caldwell and Catawba, and the Cities of Granite Falls, Hudson, Hickory, Lenoir, and Sawmills, by similar resolution adopted by each, may create the Carolina and Northwestern Railroad Authority by following the procedures of this section. The resolutions shall be filed with the Secretary of State, and when the Secretary of State finds that all such entities have adopted similar resolutions, the Secretary of State shall issue a certificate that the Carolina and Northwestern Railroad Authority exists as a body politic and corporate as provided by this act.

(b) The Carolina and Northwestern Railroad Authority shall be a body politic and corporate. The authority shall be composed of nine members, appointed as follows:

- (1) One each by the board of county commissioners of Caldwell and Catawba Counties for initial terms to expire June 30, 1996;
- (2) One by the governing board of the City of Lenoir for an initial term to expire June 30, 1996;
- (3) One each by the governing boards of the Cities of Hudson and Granite Falls for initial terms to expire June 30, 1995; and
- (4) One each by the governing boards of the Cities of Hickory and Sawmills for initial terms to expire June 30, 1994.
- (5) The President of the Caldwell County Chamber of Commerce, Inc., or a designee, and the President of the Catawba County Chamber of Commerce, Inc., or a designee.

Subsequent terms shall be for four years, except for the Presidents of the Chambers of Commerce who shall serve while holding office. With the exception of the Presidents of the Chambers of Commerce, any appointee must be a registered voter of the jurisdiction making the appointment. Vacancies shall be filled for the remainder of the unexpired term by the board making the original appointment. Each member shall subscribe an oath of office as provided by law and file that oath with the clerk of superior court of the county in which the appointee resides.

(c) The members shall be allowed reasonable compensation as determined by joint action of all of the counties and cities making appointments to the authority,

and shall be paid actual expenses incurred in the transaction of business at the instance of the authority.

Sec. 2. The members shall serve at the pleasure of their respective appointing board. The authority shall determine its own organization and shall at its first meeting in July of each calendar year elect from its membership a chair and vice-chair, and shall elect a secretary, who shall all serve for a term of one year, or until their successors are elected and qualify, except that the initial officers may be elected as soon as the authority organizes and serve until July 1, 1994.

Sec. 3. (a) The authority has the powers of a railroad corporation under Article 11 of Chapter 62 of the General Statutes, and shall be considered a railroad for the purpose of that Article. Additionally, the authority may:

- (1) Sue and be sued in the name of the authority, and all pleadings served upon the authority shall be served on the chair or secretary of the authority.
- (2) Expend funds appropriated from time to time by the units of government making appointments to the authority, jointly or severally, for railroad purposes and to appropriate and expend funds received by the authority from fees, charges, rents, and dues arising out of the operation of the railroad, the facilities, improvements, and concessions located thereat or operated thereon.
- (3) Establish, construct, control, lease, maintain, improve, operate, and regulate a railroad on lands acquired by it with buildings necessary to accommodate all types of business to operate a railroad, including parking, and any equipment to operate a railroad, to have complete authority for rules and regulations over all railroad property for the control of all types of vehicular traffic, mobile or stationary, and pedestrian traffic with respect to areas or roadways not under the control of the Department of Transportation and any rules and regulations adopted by the authority for property exclusively under its control and to have conjunctive authority to work with and cooperate with all duly constituted law enforcement agencies to enforce rules and regulations established by the State of North Carolina. The penalty for violation of rules and regulations established by the authority shall be a misdemeanor and, upon conviction, shall be punishable by a fine not to exceed fifty dollars (\$50.00) or imprisonment not to exceed 30 days. All rules and regulations so adopted by the authority shall be recorded by delivering true copies thereof certified by the chairperson and secretary of the authority to the Clerks of Superior Court of Caldwell and Catawba Counties.
- (4) For the public use or benefit the authority possesses the power of eminent domain and may acquire by purchase, gift, or condemnation, any property in Catawba and Caldwell Counties only for the purpose of establishing, extending, enlarging, or improving a railroad. The Carolina and Northwestern Railroad Authority is declared to be a local

public condemnor under the provisions of Chapter 40A of the General Statutes and in exercising the powers of eminent domain shall follow the procedures of Article 3 of that Chapter, or as an alternative may condemn under that Chapter as if it were a railroad company. Title to the property and the right of immediate possession shall vest pursuant to G.S. 40A-42(a) if the condemnation proceeding is initiated as a public condemnor. The authority may dispose of any real or personal property belonging to it according to the procedures described in Article 12 of Chapter 160A of the General Statutes.

- (5) Lease for a term of 20 years and for purposes not inconsistent with railroad purposes or usage, real or personal property or both, under the supervision of or administered by the authority.
- (6) Contract with persons, firms, or corporations for terms not to exceed 20 years, for the operation of passenger and freight service, scheduled or nonscheduled, and to charge and collect reasonable fees, charges, and rents for the use of such property, and services rendered in the operation thereof.
- (7) Operate, own, control, regulate, lease, or grant to others the license to operate amusements or concessions for a term not exceeding 20 years.
- (8) Enter into contracts, and with the prior written approval of all the governing boards making appointments, to pledge as security the property of the authority; provided, however, that neither the authority nor the individual members thereof shall have any authority to pledge the credit of or contract for any local government making appointments to the authority. With the prior written consent of the governing boards of all the units of local government making appointments to the authority, the authority may pledge any lease agreement to which it is a party as security for any loan.
- (9) Adopt and use a seal.
- (10) Contract with any federal or State agency relating to the grading, constructing, equipping, improving, maintaining, or operating of a railroad or its facilities, or both.

(b) The Carolina and Northwestern Railroad Authority shall enjoy governmental immunity; however, the authority may contract to insure itself and any of its officers, agents, or employees against liability for wrongful death or negligence or intentional damage to persons or property or against absolute liability for damage to persons or property caused by an act or omission of the authority or of any of its officers, agents, or employees when acting within the scope of their authority and the course of their employment. The members of the authority shall determine what liabilities and what officers, agents, and employees shall be covered by any insurance purchased pursuant to this provision.

Purchase of insurance pursuant to this provision waives the authority's governmental immunity to the extent of insurance coverage for any act or omission occurring in the exercise of a governmental function. By entering into an insurance

contract with the authority, an insurer waives any defense based upon the governmental immunity of the authority.

If the authority has waived its governmental immunity pursuant to the foregoing provisions of this section, any person, or if he dies, his personal representative, sustaining damages as a result of an act or omission of the authority or any of its officers, agents, or employees occurring in the exercise of a governmental function, may sue the authority for recovery of damages. To the extent of the coverage of insurance purchased pursuant to this section governmental immunity may not be a defense to the action. Otherwise, however, the authority has all defenses available to private litigants in any action brought pursuant to these provisions without restriction, limitation, or other effect whether the defense arises from common law or by virtue of a statute.

Sec. 4. Nothing in this act authorizes the authority to condemn land or establish a railroad outside the boundaries of Caldwell or Catawba Counties.

Sec. 5. In the event of cessation of the operation of a railroad established under this act, or the abandonment of any of the property acquired under this act for railroad purposes, the title to such real or personal property, or rights under any existing lease, shall revert to and vest equally in the units of local government making appointments to the authority, and upon the sale of any property after cessation of operations, the proceeds from the sale shall vest equally in the governing boards of all the units of local government making appointments to the authority.

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of June, 1993.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives