

## **Chapter 124.**

### **Internal Improvements.**

#### Article 1.

#### General Provisions.

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

The Governor and Council of State shall have charge of all the State's interest in all railroads, canals and other works of internal improvements. The Board of Directors of a State-owned railroad company shall be responsible for managing its affairs and for reporting as set forth in G.S. 124-17. (1925, c. 157, s. 1; 2000-146, s. 2; 2013-360, s. 34.14(a).)

##### **§ 124-2. State deemed shareholder in corporation accepting appropriation.**

When an appropriation is made by the State to any work of internal improvement conducted by a corporation, the State shall be considered, if so directed in the act making the appropriation, a stockholder in such corporation, and shall have as many shares as may correspond with the amount of money appropriated; and the acceptance of such money shall be deemed to be a consent of the corporation to the terms herein expressed. (1925, c. 157, s. 2; 1985, c. 792, s. 13.21.)

##### **§ 124-3. Report of railroad, canal, etc.; contents.**

(a) The president or other chief officer of every railroad, canal, or other public work of internal improvement in which the State owns an interest, shall, report annually to the Joint Legislative Commission on Governmental Operations. This report shall include:

- (1) Number of shares owned by the State.
- (2) Number of shares owned otherwise.
- (3) Par value of the shares.
- (4) Repealed by Session Laws 2000-146, s. 3, effective July 1, 2000.
- (5) Amount of bonded debt, and for what purpose contracted.
- (6) Amount of other debt, and how incurred.
- (7) If interest on bonded debt has been punctually paid as agreed; if not, how much in arrears.
- (8) Amount of gross receipts for past year, and from what sources derived.
- (9) An itemized account of expenditures for past year.
- (10) A summary of all leases, sales, or acquisitions of real property to which the company has been a party since the last report.
- (11) Suits at law pending against his company concerning its bonded debt, or in which title to all or any part of such road or canal is concerned.
- (12) Any sales of stock owned by the State, by whose order made, and disposition of the proceeds.
- (13) Annual financial statements, including notes, audited by an independent certified public accounting firm.

(b) Recodified as G.S. 124-17(b) by Session Laws 2013-360, s. 34.14(d), effective July 1, 2013.

(c) Recodified as G.S. 124-17(c) by Session Laws 2013-360, s. 34.14(d), effective July 1, 2013. (1925, c. 157, s. 3; 1993, c. 539, s. 928; 1994, Ex. Sess., c. 24, s. 14(c); 2000-67, s. 7.2(b); 2000-146, s. 3; 2013-360, s. 34.14(d).)

**§ 124-4: Repealed by Session Laws 2000-146, s. 4.**

**§ 124-5. Approval of encumbrance on State's interest in corporations.**

(a) No corporation or company in which the State owns the majority of any class of voting stock shall sell, lease, mortgage, or otherwise encumber its franchise, right-of-way, or other property, except by and with the approval and consent of the Governor and Council of State.

(b) Recodified as G.S. 124-15(b) by Session Laws 2013-360, s. 34.14(b), effective July 1, 2013. (1925, c. 157, s. 5; 1981 (Reg. Sess., 1982), c. 1372, s. 5; 1983, c. 905, ss. 10, 11; 1985, c. 792, ss. 13.25, 13.26; 2000-146, s. 5; 2013-360, s. 34.14(b).)

**§ 124-5.1. North Carolina Railroad Company dividends deposited to Highway Fund.**

Any dividends of the North Carolina Railroad Company received by the State shall be deposited into the Freight Rail & Rail Crossing Safety Improvement Fund within the Highway Fund and administered by the Rail Division of the Department of Transportation. The Fund shall be used for the enhancement of freight rail service, short-line railroad assistance, and railroad-roadway crossing safety, which may include the following project types:

- (1) Track and associated infrastructure improvements for freight service.
- (2) Grade crossing protection, elimination, and hazard removal.
- (3) Signalization improvements.
- (4) Assistance for projects to improve rail access to industrial, port, and military facilities and for freight intermodal facility improvements, provided that funding assistance under this subdivision shall be subject to the same limits as that for short-line railroads under G.S. 136-44.39.
- (5) Corridor protection and reactivation.
- (6) Subject to federal or other state law, improvements to rail lines and corridors in this State and through portions of a bordering state for the purpose of connecting with the national railroad system.
- (7) Other short-line railroad projects.

The Fund may also be used to supplement funds allocated for freight rail or railroad-roadway crossing safety projects approved as part of the Transportation Improvement Program. (2000-67, s. 7.2(a); 2005-276, s. 28.7; 2013-360, s. 34.14(g); 2015-241, s. 29.23; 2016-94, s. 35.21(a).)

**§ 124-6. Appointment of proxies, director of railroad companies, etc.**

(a) The Governor shall appoint on behalf of the State all such officers or agents as, by any act, incorporating a company for the purpose of internal improvement, are allowed to represent the stock or other interests which the State may have in such company; and such person or persons shall cast the vote to which the State may be entitled in all the meetings of the stockholders of such company under the direction of said Governor; and the said Governor may, if in his opinion the public interest so requires, remove or suspend such persons, officers, agents, proxies, or directors in his discretion.

(b) Recodified as G.S. 124-15(a) by Session Laws 2013-360, s. 34.14(b), effective July 1, 2013. (1925, c. 157, s. 6; 1997-443, s. 32.30(k); 1999-431, s. 3.3(a); 2013-360, s. 34.14(b).)

**§ 124-7. Power of investigation of corporations.**

The Governor and Council of State shall have the power to investigate the affairs of any corporation or association described in G.S. 124-3 and may require the Attorney General or the Utilities Commission to assist in making such investigation under the rules and regulations prescribed in Chapter 62. (1925, c. 157, s. 7; 1933, c. 134, s. 8; 1941, c. 97, s. 1.)

**§ 124-8. Reserved for future codification purposes.**

**§ 124-9. Reserved for future codification purposes.**

**§ 124-10. Reserved for future codification purposes.**

Article 2.

State-Owned Railroad Company.

**§ 124-11. Definition.**

As used in this Chapter, the term "State-Owned Railroad Company" shall mean a railroad company in which the State owns all of the voting stock. (2000-146, s. 7.)

**§ 124-12. Powers of a State-owned railroad company.**

A State-owned railroad company shall have, in addition to the powers of any railroad corporation, the power to:

- (1) Lease, license, or improve property. – A State-owned railroad company may lease, license, or improve its right-of-way and property, whether held by easement, presumptive grant, express grant, or otherwise, for the purpose of preserving and protecting its railroad corridor and franchise.
- (2) Condemnation in fee simple. – A State-owned railroad company may exercise the power of eminent domain to acquire property in fee simple for the purposes specified in G.S. 40A-3(a)(4). The procedures of Article 2 of Chapter 40A of the General Statutes shall apply to the exercise of the power of eminent domain under this subdivision. (2000-146, s. 7.)

**§ 124-13. Effect on State-owned railroad company charter.**

Nothing in this Chapter repeals or modifies any State-owned railroad company charter or limits the rights of the shareholders of the company as provided in Chapter 55 of the General Statutes. (2000-146, s. 7.)

§ 124-14: Reserved for future codification purposes.

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

(a) Notwithstanding subsection (a) of G.S. 124-6, for any State-owned railroad company that has trackage in more than two counties, seven of the members of the Board of Directors shall be appointed by the Governor, three of the members of the Board of Directors shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and three of the members of the Board of Directors shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The Board of Directors shall consist of 13 members. Of the Governor's seven appointments, one shall be from the appointees to the Board of Transportation and one shall be the Secretary of Commerce or the Secretary's designee. Of the initial members appointed by the Governor, three shall be appointed for terms of four years and four shall be appointed for terms of two years. Of the initial members recommended to the General Assembly by the Speaker of the House of Representatives, two shall be appointed for terms of four years and one shall be appointed for a term of two years. Of the initial members recommended to the General Assembly by the President Pro Tempore of the Senate, two shall be appointed for terms of four years and one shall be appointed for a term of two years. Thereafter all Board members shall serve four-year terms. The Board shall elect the chairman from among its membership.

(b) No State-owned railroad company shall sell, lease, mortgage, or otherwise encumber its franchise, right-of-way, or other property, except by and with the approval and consent of the Board of Directors of that corporation. The president or other chief officer of the State-owned railroad company shall report any acquisitions and dispositions in accordance with G.S. 124-3(10). (1997-443, s. 32.30(k); 1999-431, s. 3.3(a); 2000-146, s. 5; 2013-360, s. 34.14(b).)

**§ 124-16. Strategic plan and capital investment plan required of State-owned railroad company; performance management system.**

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

(b) Any State-owned railroad company shall develop and implement a formalized performance management system based on its strategic plan. The performance management system shall measure and monitor progress toward achieving strategic objectives. When performance fails to achieve strategic objectives within the time period established in the plan, a State-owned railroad company shall take corrective action. (2013-360, s. 34.14(c).)

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

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

(1) The information required under G.S. 124-3.

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

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

(c) Confidential information includes (i) information related to a proposed specific business transaction where inspection, examination, or copying of the records would frustrate the purpose for which the records were created, or (ii) information that is subject to confidentiality obligations of a railroad company. Confidential information is exempt from Chapter 132 of the General Statutes and shall not be subject to a request under G.S. 132-6(a). (2000-146, s. 3; 2013-360, s. 34.14(d).)

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

Any State-owned railroad company that has trackage in more than two counties shall issue an annual cash dividend to the State. The amount of the annual dividend is twenty-five percent (25%) of the company's income from the prior year's trackage rights agreements. The dividend is due by February 15 of each year, and interest shall accrue at the annual rate of prime plus one percent (1%) if the payment is not paid by the due date. The Directors of any State-owned railroad company who vote for or assent to the dividend required under this section shall not be held liable under G.S. 55-8-33. (2013-360, s. 34.14(h); 2014-115, s. 55.2.)