

1 SENATE BILL 422

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO RAILROAD SAFETY; REQUIRING MINIMUM CREW FOR
12 OPERATION OF A RAILROAD TRAIN OR LOCOMOTIVE IN NEW MEXICO;
13 PRESCRIBING PENALTIES.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 63-2-2 NMSA 1978 (being Laws 1878,
17 Chapter 1, Section 6-2, as amended) is amended to read:

18 "63-2-2. ADDITIONAL POWERS.--In addition to those powers
19 enumerated in Section 63-2-1 NMSA 1978, every railroad
20 corporation shall have the following powers:

21 A. to cause such examinations and surveys to be
22 made as may be necessary to the selection of the most suitable
23 routes for its railroad and telegraph lines, and for that
24 purpose, by its officers and agents, to enter upon the lands
25 and waters of the state, of private persons and of private and

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1 public corporations, subject, however, to responsibility for
2 all damages that it may do thereto;

3 B. to take, hold and convey, by deed or otherwise,
4 the same as a natural person, such voluntary grants and
5 donations of real and personal property as may be made to aid
6 the construction and maintenance and to provide for the
7 accommodation of its railroad and telegraph lines, or either
8 thereof;

9 C. to purchase and, by voluntary grants and
10 donations, to receive and take and, by its officers, engineers,
11 surveyors and agents, to enter upon, possess, hold and use in
12 any manner it may deem proper all such lands and other property
13 as its directors may deem necessary, proper and convenient for
14 the construction, maintenance and operation of its railroad and
15 telegraph lines, or either thereof, and for the erection of
16 stations, depots, water tanks, side tracks, turnouts,
17 turntables, yards, workshops, warehouses and for all other
18 purposes necessary or convenient to the corporation in the
19 transaction of its business;

20 D. to lay out its railroad and branches, not
21 exceeding two hundred feet wide, and to construct and maintain
22 the same, with single or double track, with such appendages as
23 its directors may deem necessary for the convenient use
24 thereof. For the purpose of making embankments, excavations,
25 ditches, drains, culverts and the like and of procuring timber,

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1 stone, gravel and other materials for the proper construction
2 and security of its railroad and branches, the corporation may
3 take and occupy as much more land as its directors may deem
4 necessary or convenient for the purposes aforesaid;

5 E. to construct its railroads and telegraphs across,
6 along or upon any stream of water, water course, street, avenue
7 or highway or across any railway, canal, ditch or flume that
8 its railroad and telegraph, or either thereof, shall intersect,
9 cross or run along; but the corporation shall restore such
10 stream, water courses, streets, avenues, highways, railways,
11 canals, ditches and flumes, so intersected, to their former
12 state, as near as may be, so as not to unnecessarily impair
13 their use or injure their franchises. Wherever its road
14 crosses a navigable stream or body of water, the bridge shall
15 be constructed with a draw, if a draw is necessary, to avoid
16 obstructing the navigation of such stream or body of water;

17 F. to cross, intersect, join and unite its railroad
18 with any other railroads that have been constructed or that may
19 be constructed at any point on the routes thereof, and upon the
20 grounds of such other railroad companies, with the necessary
21 turnouts, sidings and switches and such other conveniences and
22 appliances as may be necessary to make and complete the
23 crossings, intersections and connections. Such other railroad
24 companies shall unite with the directors of the corporation in
25 making the crossings, intersections and connections and shall

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1 grant the facilities therefor upon such terms and conditions as
2 may be agreed upon between them; but if they are unable to
3 agree upon the compensation to be made therefor or the points
4 at which or the manner in which such crossings, intersections
5 and connections shall be made, the same shall be ascertained,
6 determined and declared in the manner and by the proceedings
7 hereinafter provided for the taking of private property for the
8 use of the corporation;

9 G. to purchase or take by donation or otherwise,
10 land, timber, stone, gravel or other materials to be used in
11 the construction and maintenance of its railroads and
12 telegraphs, or either thereof, and if the same cannot be
13 obtained by agreement with the owners thereof, to take the same
14 by the proceedings and in the manner hereinafter provided for
15 the taking of private property for the use of the corporation;

16 H. to take, transport, carry and convey persons and
17 property on its railroads by the force and power of steam, of
18 animals or any other mechanical power, or by any combination
19 thereof, and to collect and receive tolls or compensation
20 therefor;

21 I. to erect and maintain all necessary and convenient
22 buildings, stations, depots, watering places, fixtures and
23 machinery for the accommodation of its passengers, freight and
24 business and to obtain and hold, by purchase, donation or
25 condemnation as hereinafter provided, lands and other property

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1 necessary therefor;

2 J. to take, possess and enjoy, by purchase, donation
3 or condemnation, such natural springs and streams of water, or
4 so much thereof as may be necessary for its uses and purposes
5 in operating its railroad, together with the right of way
6 thereto for pipes, ditches, canals or aqueducts for the
7 conveyance thereof;

8 K. to regulate the time and manner in which
9 passengers and property shall be transported over its roads and
10 the tolls or compensation to be paid therefor; provided that it
11 shall be unlawful for such corporation to charge more than six
12 cents (\$.06) per mile for each passenger and fifteen cents
13 (\$.15) per mile for each ton of two thousand pounds, or forty
14 cubic feet, of freight transported on its roads; provided,
15 further, that in no case shall such corporation be required to
16 receive less than twenty-five cents (\$.25) for any one lot of
17 freight for any distance; and provided, further, that such
18 corporation shall not be required to transport domestic
19 animals, nitroglycerine compounds, gunpowder, acids,
20 phosphorous and other explosive or destructive combustible
21 materials except upon such terms, conditions and rates of
22 freightage as its board of directors may from time to time
23 prescribe and establish;

24 L. to regulate the force and speed of its
25 locomotives, cars, trains or other machinery used on its roads

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1 and to establish, execute and enforce all needful and proper
2 rules and regulations for the management of its trains, except
3 as otherwise prescribed by statute, the conduct of its business
4 and to secure the safety, comfort and good behavior of its
5 passengers and employees and agents and for the prevention and
6 suppression of gambling of every kind and description on its
7 cars or within its depots or station grounds;

8 M. to expel from its cars at any stopping place,
9 using no more force than may be necessary, any passenger who,
10 upon demand, refuses to pay the passenger's fare or behaves in
11 a rude, riotous or disorderly manner toward other passengers or
12 the employees of such corporations in charge of such cars or,
13 upon the passenger's attention being called thereto, persists
14 in violating the rules of the corporation against gambling upon
15 its cars;

16 N. to borrow on the credit of the corporation and
17 under authority of its board of directors or in such manner as
18 the board may prescribe under regulation, resolution or
19 otherwise such sums of money as may be necessary for
20 constructing and equipping its railroad and telegraph lines or
21 for making extensions or additions thereto or betterments or
22 improvements thereof or for funding or refunding its
23 outstanding indebtedness or retiring its obligations and for
24 such other purposes as may be deemed proper in the conduct of
25 its business or in the execution of its powers and to issue and

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1 dispose of its bonds and promissory notes or obligations
2 therefor in denominations of not less than one hundred dollars
3 (\$100) or any multiple thereof and at a rate of interest not
4 exceeding ten percent per year and for such amounts as the
5 board of directors may deem proper, although in excess of its
6 capital stock. To secure the payment of such bonds, notes or
7 obligations or the bonds or obligations of any other
8 corporation that may be issued in its interest, or for any of
9 the above purposes or to raise funds therefor, it may mortgage
10 or convey in trust its corporate property or any part thereof
11 and the rights, privileges, powers and franchises in connection
12 therewith or appurtenant thereto;

13 O. to grant to any railroad corporation the right to
14 use in common with it its railroad and telegraph lines or any
15 part thereof. In making such grants and in agreeing upon and
16 prescribing the terms and conditions thereof and the amount and
17 nature of the consideration therefor, such corporation shall
18 have all the rights, powers, capacities and abilities that are
19 enjoyed by natural persons;

20 P. to take grants of the right to use in common
21 railroad and telegraph lines of other railroad corporations
22 and, in taking and receiving such grants, to have and enjoy the
23 same rights, powers, capacities and abilities that are granted
24 in Subsection O of this section;

25 Q. to change the line of its road, in whole or in

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1 part, whenever a majority of its directors may so determine;
2 provided that no such change shall vary the general route of
3 such road as described in its articles of incorporation. The
4 land required for such new line may be acquired by contract
5 with the owners thereof or by condemnation, as provided by law,
6 as in the case of the original line;

7 R. to increase or diminish its capital stock if at
8 any time it appears that the amount thereof, as fixed in its
9 articles of incorporation, is either more or less than is
10 actually required for constructing, equipping, operating and
11 maintaining its road and telegraph lines. Such increase or
12 decrease shall not be made except by a vote of stockholders
13 representing at least two-thirds of the subscribed capital
14 stock. A certified copy of the proceedings of the meeting and
15 its action in the premises, under the seal of the corporation,
16 shall be filed in the office of the secretary of state and be,
17 by the secretary of state, attached to the articles of
18 incorporation on file in the secretary of state's office; and

19 S. to consolidate with one or more railroad
20 corporations or under the laws of any other state or territory,
21 its capital stock, properties, roads, equipments, adjuncts,
22 franchises, claims, demands, contracts, agreements,
23 obligations, debts, liabilities and assets of every kind and
24 description upon such terms and in such manner as may be agreed
25 upon by the respective boards of directors; provided that no

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1 such consolidation shall take effect until it has been ratified
2 and confirmed in writing by stockholders of the respective
3 corporations representing three-fourths of the subscribed
4 capital stock of their respective corporations. In case of
5 such consolidation, articles of incorporation and consolidation
6 shall be prepared setting forth:

7 (1) the name of the new corporation;
8 (2) the purpose for which it is formed;
9 (3) the place where its principal business is to
10 be transacted;

11 (4) the term for which it is to exist, which
12 shall not exceed fifty years;

13 (5) the number of its directors, which shall not
14 be less than five nor more than eleven, and the names and
15 residences of the persons appointed to act as such until their
16 successors are elected and qualified;

17 (6) the amount of its capital stock, which shall
18 not exceed the amount actually required for the purposes of the
19 new corporation, as estimated by competent engineers, and the
20 number of shares into which it is divided;

21 (7) the amount of stock actually subscribed and
22 by whom;

23 (8) the termini of its road and branches;

24 (9) the estimated length of its road and
25 branches;

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1 (10) that at least ten percent of its subscribed
2 capital stock has been paid in;

3 (11) the names of the constituent corporations
4 and the terms and conditions of consolidation in full. The
5 articles of incorporation and consolidation shall be signed and
6 countersigned by the presidents and secretaries of the several
7 constituent corporations and sealed with their corporate seals.
8 There shall be annexed thereto memoranda of the ratification
9 and confirmation thereof by the stockholders of each
10 constituent corporation, which must be respectively signed by
11 stockholders representing at least three-fourths of the capital
12 stock of their respective corporations. When completed, the
13 articles shall be filed in the office of the secretary of
14 state, and thereupon the constituent corporations named therein
15 must be deemed and held to have become extinct in all courts
16 and places and the new corporation shall be deemed and held in
17 all courts and places to have succeeded to all their several
18 capital stocks, properties, roads, equipments, adjuncts,
19 franchises, claims, demands, contracts, agreements, assets,
20 choses and rights in action, of every kind and description,
21 both at law and in equity, and to be entitled to possess, enjoy
22 and enforce the same and every thereof, as fully and completely
23 as either and every of its constituents might have done had no
24 consolidation taken place. The consolidated or new corporation
25 shall also, in all courts and places, be deemed and held to

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1 have become subrogated to its several constituents and each
2 thereof in respect to all their contracts and agreements with
3 other parties and all their debts, obligations and liabilities
4 of every kind and nature to any persons, corporations or bodies
5 politic. The new corporation shall sue and be sued in its own
6 name in any and every case in which any or either of its
7 constituents might have sued or might have been sued, at law or
8 in equity, had no such consolidation been made. Such
9 consolidated or new corporation shall possess, enjoy and
10 exercise all its franchises, properties, powers, privileges,
11 abilities, rights and immunities under the provisions of this
12 chapter, and shall conduct its business according to its
13 provisions and be subject to all its pains and penalties.

14 Nothing in this paragraph shall be construed to impair the
15 obligation of any contract to which any of such constituents
16 were parties at the date of consolidation. All such contracts
17 may be enforced by action or suit, as the case may be, against
18 the consolidated corporation and satisfaction obtained out of
19 the property that, at the date of the consolidation, belonged
20 to the constituent, that was a party to the contract in action
21 or suit, as well as out of any other property belonging to the
22 consolidated corporation; and

23 (12) every railroad corporation, in addition to
24 the foregoing, shall have such further powers as may be
25 necessary or convenient to enable it to exercise and enjoy,

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1 fully and completely, all the powers granted by this chapter
2 and, generally all such powers as are usually conferred upon,
3 required and exercised by railroad corporations and, in the
4 exercise of its powers and every thereof, shall have and enjoy
5 all the rights, privileges, abilities and capacities that are
6 enjoyed by natural persons."

7 SECTION 2. A new section of Chapter 63, Article 3 NMSA
8 1978 is enacted to read:

9 "[NEW MATERIAL] RAILROAD SAFETY--DEFINITIONS.--As used in
10 Chapter 63, Article 3 NMSA 1978:

11 A. "class 1 railroad" means a class 1 railroad as
12 defined in 49 U.S.C. 20101, as amended;

13 B. "class 2 railroad" means a class 2 railroad as
14 defined in 49 U.S.C. 20101, as amended;

15 C. "helper" means a railway locomotive that
16 temporarily assists a train that requires additional power or
17 traction to climb a gradient; and

18 D. "hostling" means the action of shuttling a
19 locomotive from the yard to the engine house or vice versa."

20 SECTION 3. A new section of Chapter 63, Article 3 NMSA
21 1978 is enacted to read:

22 "[NEW MATERIAL] RAILROAD SAFETY--FREIGHT TRAINS--MINIMUM
23 CREWS--PENALTIES.--

24 A. Except for hostling and helper operations, remote
25 control locomotives in railyards or as otherwise provided by

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1 federal law or regulation, a class 1 or class 2 railroad shall
2 not allow the operation of a railroad train or locomotive in
3 New Mexico that is used in the movement of freight without a
4 crew composed of at least two persons.

5 B. A railroad or railroad supervisor who violates the
6 provisions of Subsection A of this section shall be subject to
7 a civil penalty of up to one thousand dollars (\$1,000) for the
8 first violation and a civil penalty of up to five thousand
9 dollars (\$5,000) for each subsequent violation."