

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR

HOUSE BILL 105

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO RAILROAD SAFETY; REQUIRING AT LEAST TWO PERSONS FOR THE OPERATION OF A RAILROAD TRAIN OR LOCOMOTIVE THAT IS USED IN THE MOVEMENT OF FREIGHT Hf11→; ~~PRESCRIBING PENALTIES~~←Hf11 .

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

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

"63-2-2. ADDITIONAL POWERS.--In addition to those powers

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enumerated in Section 63-2-1 NMSA 1978, every railroad corporation shall have the following powers:

A. to cause such examinations and surveys to be made as may be necessary to the selection of the most suitable routes for its railroad and telegraph lines, and for that purpose, by its officers and agents, to enter upon the lands and waters of the state, of private persons and of private and public corporations, subject, however, to responsibility for all damages that it may do thereto;

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

C. to purchase and, by voluntary grants and donations, to receive and take and, by its officers, engineers, surveyors and agents, to enter upon, possess, hold and use in any manner it may deem proper all [~~such~~] lands and other property [~~as~~] that its directors may deem necessary, proper and convenient for the construction, maintenance and operation of its railroad and telegraph lines, or either thereof, and for the erection of stations, depots, water tanks, side tracks, turnouts, turntables, yards, workshops, warehouses and for all

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other purposes necessary or convenient to the corporation in the transaction of its business;

D. to lay out its railroad and branches, not exceeding two hundred feet wide, and to construct and maintain the same, with single or double track, with [~~such~~] appendages [~~as~~] that its directors may deem necessary for the convenient use thereof. For the purpose of making embankments, excavations, ditches, drains, culverts and the like and of procuring timber, stone, gravel and other materials for the proper construction and security of its railroad and branches, the corporation may take and occupy as much more land as its directors may deem necessary or convenient for the purposes aforesaid;

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

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[~~such~~] the stream or body of water;

F. to cross, intersect, join and unite its railroad with any other railroads that have been constructed or that may be constructed at any point on the routes thereof, and upon the grounds of such other railroad companies, with the necessary turnouts, sidings and switches and such other conveniences and appliances as may be necessary to make and complete the crossings, intersections and connections. [~~Such~~] The other railroad companies shall unite with the directors of the corporation in making the crossings, intersections and connections and shall grant the facilities therefor upon [~~such~~] terms and conditions as may be agreed upon between them; but if they are unable to agree upon the compensation to be made therefor or the points at which or the manner in which [~~such~~] the crossings, intersections and connections shall be made, the same shall be ascertained, determined and declared in the manner and by the proceedings hereinafter provided for the taking of private property for the use of the corporation;

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

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

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

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

K. to regulate the time and manner in which passengers and property shall be transported over its roads and the tolls or compensation to be paid therefor; provided that it shall be unlawful for [~~such~~] the corporation to charge more than six cents (\$.06) per mile for each passenger and fifteen cents (\$.15) per mile for each ton of two thousand pounds, or forty cubic feet, of freight transported on its roads; provided, further, that in no case shall [~~such~~] the corporation

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be required to receive less than twenty-five cents (\$.25) for any one lot of freight for any distance; and provided, further, that [~~such~~] the corporation shall not be required to transport domestic animals, nitroglycerine compounds, gunpowder, acids, phosphorous and other explosive or destructive combustible materials except upon such terms, conditions and rates of freightage as its board of directors may from time to time prescribe and establish;

L. to regulate the force and speed of its locomotives, cars, trains or other machinery used on its roads and to establish, execute and enforce all needful and proper rules and regulations for the management of its trains, except as otherwise prescribed by statute, the conduct of its business and to secure the safety, comfort and good behavior of its passengers and employees and agents and for the prevention and suppression of gambling of every kind and description on its cars or within its depots or station grounds;

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

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N. to borrow on the credit of the corporation and under authority of its board of directors or in [~~such~~] a manner as the board may prescribe under regulation, resolution or otherwise [~~such~~] sums of money as may be necessary for constructing and equipping its railroad and telegraph lines, [~~or for~~] making extensions, [~~or~~] additions, [~~thereto or~~] betterments or improvements thereof, [~~or for~~] funding or refunding its outstanding indebtedness, [~~or~~] retiring its obligations and for [~~such~~] all other purposes as may be deemed proper in the conduct of its business or in the execution of its powers and to issue and dispose of its bonds and promissory notes or obligations therefor in denominations of not less than one hundred dollars (\$100) or any multiple thereof and at a rate of interest not exceeding ten percent per year and for such amounts as the board of directors may deem proper, although in excess of its capital stock. To secure the payment of such bonds, notes or obligations or the bonds or obligations of any other corporation that may be issued in its interest, or for any of the above purposes or to raise funds therefor, it may mortgage or convey in trust its corporate property or any part thereof and the rights, privileges, powers and franchises in connection therewith or appurtenant thereto;

O. to grant to any railroad corporation the right to use in common with it its railroad and telegraph lines or any part thereof. In making [~~such~~] the grants and in agreeing upon

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and prescribing the terms and conditions thereof and the amount and nature of the consideration therefor, [~~such~~] the corporation shall have all the rights, powers, capacities and abilities that are enjoyed by natural persons;

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

Q. to change the line of its road, in whole or in part, whenever a majority of its directors may so determine; provided that no [~~such~~] change shall vary the general route of [~~such~~] the road as described in its articles of incorporation. The land required for [~~such~~] the new line may be acquired by contract with the owners thereof or by condemnation, as provided by law, as in the case of the original line;

R. to increase or diminish its capital stock if at any time it appears that the amount thereof, as fixed in its articles of incorporation, is either more or less than is actually required for constructing, equipping, operating and maintaining its road and telegraph lines. [~~Such~~] The increase or decrease shall not be made except by a vote of stockholders representing at least two-thirds of the subscribed capital stock. A certified copy of the proceedings of the meeting and its action in the premises, under the seal of the corporation,

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shall be filed in the office of the secretary of state and be, by the secretary of state, attached to the articles of incorporation on file in the secretary of state's office; and

S. to consolidate with one or more railroad corporations or under the laws of any other state or territory, its capital stock, properties, roads, equipments, adjuncts, franchises, claims, demands, contracts, agreements, obligations, debts, liabilities and assets of every kind and description upon such terms and in such manner as may be agreed upon by the respective boards of directors; provided that no [~~such~~] consolidation shall take effect until it has been ratified and confirmed in writing by stockholders of the respective corporations representing three-fourths of the subscribed capital stock of their respective corporations. In case of [~~such~~] consolidation, articles of incorporation and consolidation shall be prepared setting forth:

- (1) the name of the new corporation;
- (2) the purpose for which it is formed;
- (3) the place where its principal business is to be transacted;
- (4) the term for which it is to exist, which shall not exceed fifty years;
- (5) the number of its directors, which shall not be less than five nor more than eleven, and the names and residences of the persons appointed to act as such until their

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successors are elected and qualified;

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

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

(8) the termini of its road and branches;

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

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

(11) the names of the constituent corporations and the terms and conditions of consolidation in full. The articles of incorporation and consolidation shall be signed and countersigned by the presidents and secretaries of the several constituent corporations and sealed with their corporate seals. There shall be annexed thereto memoranda of the ratification and confirmation thereof by the stockholders of each constituent corporation, which must be respectively signed by stockholders representing at least three-fourths of the capital stock of their respective corporations. When completed, the articles shall be filed in the office of the secretary of state, and thereupon the constituent corporations named therein must be deemed and held to have become extinct in all courts

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and places and the new corporation shall be deemed and held in all courts and places to have succeeded to all their several capital stocks, properties, roads, equipments, adjuncts, franchises, claims, demands, contracts, agreements, assets, choses and rights in action, of every kind and description, both at law and in equity, and to be entitled to possess, enjoy and enforce the same and every thereof, as fully and completely as either and every of its constituents might have done had no consolidation taken place. The consolidated or new corporation shall also, in all courts and places, be deemed and held to have become subrogated to its several constituents and each thereof in respect to all their contracts and agreements with other parties and all their debts, obligations and liabilities of every kind and nature to any persons, corporations or bodies politic. The new corporation shall sue and be sued in its own name in any and every case in which any or either of its constituents might have sued or might have been sued, at law or in equity, had no such consolidation been made. [~~Such~~] The consolidated or new corporation shall possess, enjoy and exercise all its franchises, properties, powers, privileges, abilities, rights and immunities under the provisions of this chapter, and shall conduct its business according to its provisions and be subject to all its pains and penalties. Nothing in this paragraph shall be construed to impair the obligation of any contract to which any of [~~such~~] the

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constituents were parties at the date of consolidation. All such contracts may be enforced by action or suit, as the case may be, against the consolidated corporation and satisfaction obtained out of the property that, at the date of the consolidation, belonged to the constituent, that was a party to the contract in action or suit, as well as out of any other property belonging to the consolidated corporation; and

(12) every railroad corporation, in addition to the foregoing, shall have ~~[such]~~ further powers ~~[as may be]~~ necessary or convenient to enable it to exercise and enjoy, fully and completely, all the powers granted by this chapter and, generally all ~~[such]~~ the powers ~~[as]~~ that are usually conferred upon, required and exercised by railroad corporations and, in the exercise of its powers and every thereof, shall have and enjoy all the rights, privileges, abilities and capacities that are enjoyed by natural persons."

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

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

- A. "class 1 railroad" means a class 1 railroad as defined pursuant to federal law;
- B. "class 2 railroad" means a class 2 railroad as defined pursuant to federal law;
- C. "crew" means an engineer or conductor who is on a

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locomotive or train and qualified to operate the locomotive or train pursuant to the requirements of the federal railroad administration's regulations in 49 CFR Parts 240 and 242;

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

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

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

"[NEW MATERIAL] RAILROAD SAFETY--FREIGHT TRAINS--MINIMUM CREWS Hf11→~~---PENALTIES~~←Hf11 .--

Hf11→~~A.~~←Hf11 A class 1 or class 2 railroad shall not allow in New Mexico the operation of a railroad train or locomotive that is used in the movement of freight without a crew composed of at least two workers, except:

Hf11→~~(1)~~←Hf11 Hf11→~~A.~~←Hf11 hostling and helper operations;

Hf11→~~(2)~~←Hf11 Hf11→~~B.~~←Hf11 remote control locomotives in railyards; or

Hf11→~~(3)~~←Hf11 Hf11→~~C.~~←Hf11 as otherwise provided by federal law or regulation.

Hf11→~~B. A railroad or railroad supervisor that violates the provisions of Subsection A of this section shall be subject to a civil penalty of up to one thousand dollars~~

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~~(\$1,000) for the first violation and a civil penalty of up to five thousand dollars (\$5,000) for each subsequent violation.~~←Hf11 Hf11→"←Hf11

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