SENATE BILL 167

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Harold Pope, Jr.

AN ACT

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

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
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 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 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 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
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 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 such 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 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 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;

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

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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
therefor 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 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 corporation be required to
receive less than twenty-five cents ($.25) for any one lot of
freight for any distance; and provided, further, that such
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 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;

N. to borrow on the credit of the corporation and under authority of its board of directors or in such 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 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 grants and in agreeing upon and
prescribing the terms and conditions thereof and the amount and
nature of the consideration therefor, such 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 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 road as described in its articles of incorporation. The
land required for such 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 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,
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 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
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,
chooses 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

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

D. "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--PENALTIES.--

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

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

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

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