

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 105

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

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; 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

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underscoring material = new
[bracketed material] = delete

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~~] that may be made
6 to aid 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
13 property [~~as~~] that its directors may deem necessary, proper and
14 convenient for the construction, maintenance and operation of
15 its railroad and telegraph lines, or either thereof, and for
16 the erection of stations, depots, water tanks, side tracks,
17 turnouts, turntables, yards, workshops, warehouses and for all
18 other purposes necessary or convenient to the corporation in
19 the 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
23 [~~as~~] that its directors may deem necessary for the convenient
24 use thereof. For the purpose of making embankments,
25 excavations, ditches, drains, culverts and the like and of

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

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

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

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

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

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

23 I. to erect and maintain all necessary and convenient
24 buildings, stations, depots, watering places, fixtures and
25 machinery for the accommodation of its passengers, freight and

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1 business and to obtain and hold, by purchase, donation or
2 condemnation as hereinafter provided, lands and other property
3 necessary therefor;

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

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

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

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

18 N. to borrow on the credit of the corporation and
19 under authority of its board of directors or in [~~such~~] a manner
20 as the board may prescribe under regulation, resolution or
21 otherwise [~~such~~] sums of money as may be necessary for
22 constructing and equipping its railroad and telegraph lines,
23 [~~or for~~] making extensions, [~~or~~] additions, [~~thereto or~~]
24 betterments or improvements thereof, [~~or for~~] funding or
25 refunding its outstanding indebtedness, [~~or~~] retiring its

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

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

22 P. to take grants of the right to use in common
23 railroad and telegraph lines of other railroad corporations
24 and, in taking and receiving [~~such~~] the grants, to have and
25 enjoy the same rights, powers, capacities and abilities that

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1 are granted in Subsection O of this section;

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

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

21 S. to consolidate with one or more railroad
22 corporations or under the laws of any other state or territory,
23 its capital stock, properties, roads, equipments, adjuncts,
24 franchises, claims, demands, contracts, agreements,
25 obligations, debts, liabilities and assets of every kind and

1 description upon such terms and in such manner as may be agreed
2 upon by the respective boards of directors; provided that no
3 [~~such~~] consolidation shall take effect until it has been
4 ratified and confirmed in writing by stockholders of the
5 respective corporations representing three-fourths of the
6 subscribed capital stock of their respective corporations. In
7 case of [~~such~~] consolidation, articles of incorporation and
8 consolidation shall be prepared setting forth:

- 9 (1) the name of the new corporation;
- 10 (2) the purpose for which it is formed;
- 11 (3) the place where its principal business is to
12 be transacted;
- 13 (4) the term for which it is to exist, which
14 shall not exceed fifty years;
- 15 (5) the number of its directors, which shall not
16 be less than five nor more than eleven, and the names and
17 residences of the persons appointed to act as such until their
18 successors are elected and qualified;
- 19 (6) the amount of its capital stock, which shall
20 not exceed the amount actually required for the purposes of the
21 new corporation, as estimated by competent engineers, and the
22 number of shares into which it is divided;
- 23 (7) the amount of stock actually subscribed and
24 by whom;
- 25 (8) the termini of its road and branches;

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

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

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

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1 consolidation taken place. The consolidated or new corporation
2 shall also, in all courts and places, be deemed and held to
3 have become subrogated to its several constituents and each
4 thereof in respect to all their contracts and agreements with
5 other parties and all their debts, obligations and liabilities
6 of every kind and nature to any persons, corporations or bodies
7 politic. The new corporation shall sue and be sued in its own
8 name in any and every case in which any or either of its
9 constituents might have sued or might have been sued, at law or
10 in equity, had no such consolidation been made. [~~Such~~] The
11 consolidated or new corporation shall possess, enjoy and
12 exercise all its franchises, properties, powers, privileges,
13 abilities, rights and immunities under the provisions of this
14 chapter, and shall conduct its business according to its
15 provisions and be subject to all its pains and penalties.
16 Nothing in this paragraph shall be construed to impair the
17 obligation of any contract to which any of [~~such~~] the
18 constituents were parties at the date of consolidation. All
19 such contracts may be enforced by action or suit, as the case
20 may be, against the consolidated corporation and satisfaction
21 obtained out of the property that, at the date of the
22 consolidation, belonged to the constituent, that was a party to
23 the contract in action or suit, as well as out of any other
24 property belonging to the consolidated corporation; and

25 (12) every railroad corporation, in addition to

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

9 SECTION 2. A new section of Chapter 63, Article 3 NMSA
10 1978 is enacted to read:

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

13 A. "class 1 railroad" means a class 1 railroad as
14 defined pursuant to federal law;

15 B. "class 2 railroad" means a class 2 railroad as
16 defined pursuant to federal law;

17 C. "crew" means an engineer or conductor who is on a
18 locomotive or train and qualified to operate the locomotive or
19 train pursuant to the requirements of the federal railroad
20 administration's regulations in 49 CFR Parts 240 and 242;

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

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

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

3 "[NEW MATERIAL] RAILROAD SAFETY--FREIGHT TRAINS--MINIMUM
4 CREWS--PENALTIES.--

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

- 9 (1) hostling and helper operations;
10 (2) remote control locomotives in railyards; or
11 (3) as otherwise provided by federal law or
12 regulation.

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