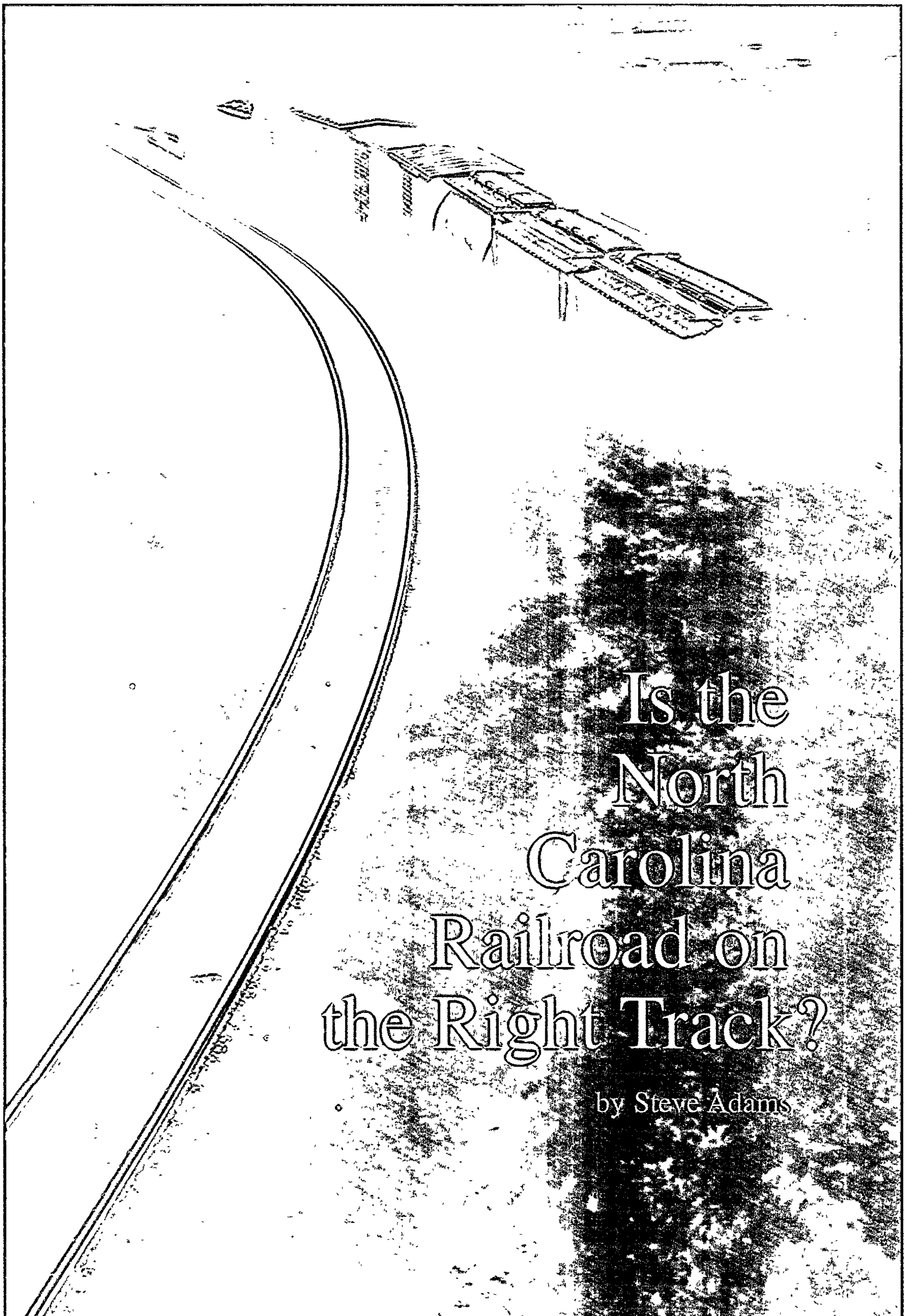


Karen Tam

Is the North Carolina Railroad on the Right Track?

by Steve Adams

Summary

In the fall of 1994, the state announced the terms of a tentative new lease with Norfolk Southern Corporation for the North Carolina Railroad—a 317-mile rail line that arcs across the state from Morehead City through Goldsboro, Raleigh, and Greensboro to Charlotte. The state owns 75 percent of the railroad and private shareholders own 25 percent.

Announcing a lease agreement ended months of speculation about how much the state would improve on a 99-year lease (1895 to 1994) that returned less than 1 percent on today's dollar—a figure history had proven to be ridiculously low. The tentative agreement included a substantially higher lease rate, plus plans to reorganize the railroad as a real estate investment trust to escape state and federal taxes and thus increase its return to investors. But as quickly as the new lease was announced, it was denounced by the private shareholders. They complained they had been low-balled again and continued to maintain that the state has a conflict of interest that forces it to keep lease rates low at their expense. Private shareholders moved quickly to try and block the agreement. Four separate lawsuits were filed, and another group of shareholders launched a boycott of the meeting at which the new lease agreement would be proposed for approval.

The state's primary interest is in keeping the rail line open and operating for economic development purposes—even the less profitable links such as the line between Goldsboro and Morehead City. Longer term, the state sees a role for the railroad in upgrading passenger service between Charlotte and Raleigh, providing commuter service for rapidly growing urban areas such as the Research Triangle Park region, and even providing a corridor for futuristic high-speed rail. These interests—particularly the desire to keep all segments of the rail line open and freight costs low for economic development purposes—may encourage the state to keep lease rates low. The private shareholders are interested in maximizing return on investment, which means the highest possible lease rates. The state's taxpayers also have an interest in a high lease rate in order to bring more revenue into state budget coffers.

In this latest round of lease negotiations, the private shareholders maintain, the state has given away the store at the bargaining table. This article revisits a long-standing question: Is the public-private ownership structure any way to run a railroad?

The N.C. General Assembly had economic development in mind in 1849 when it chartered the North Carolina Railroad (NCRR) with the state as majority shareholder. The state was descending deeper into poverty as its neighbors to the north and south prospered, and many blamed the state's poor transportation system. East-west railroads were developing in South Carolina and Virginia, and there was concern that an imminent north-south link would bypass eastern North Carolina, derailing what economic growth there was.[1]

The NCRR's first president was John Motley Morehead, who had been governor from 1841 to 1845. He proclaimed that the new railroad would be "the Tree of Life to North Carolina," reaching from the coast to the mountains.[2] And he might have been right: the small towns along the tracks grew into what is now known as the Piedmont Crescent.

The company ceased rail operations in 1871 and leased its tracks and all of its rolling stock, which was to be replaced when the lease expired. Yet, today it still owns a rail line that arcs 317 miles across the state from Morehead City through Goldsboro, Raleigh and Greensboro to Charlotte. As negotiations proceed on the details of a new lease, Norfolk Southern Corporation continues to operate the line under the terms of two leases that began in 1895 and 1939 and expired at the end of 1994.[3]

The state owns 75 percent of the NCRR's stock, and the governor appoints 10 members of the corporation's 15 member board. Nevertheless, the NCRR is in most respects an ordinary corporation. Its remaining shareholders are private investors. This arrangement creates inherent conflicts.

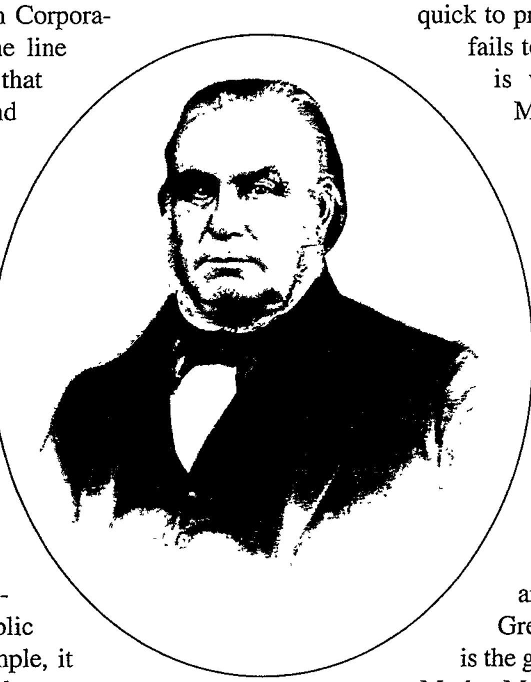
The state needs flexibility in order to pursue its public policy objectives. For example, it could use its leverage to keep lease rates low and promote economic development. Or it could seek a high rate of return and use the proceeds to subsidize public transportation or other beneficial public purposes. The private shareholders, at least the most vocal of them, have made it clear that they have only one objective in mind—return on their investment. Norfolk Southern says it is willing to cooperate with the state—but only within strict limits.

The conflict between the state and private shareholders came to a head in the fall of 1994. After months of super-secret negotiations, the NCRR announced a tentative agreement for a new lease for $8 million a year, with adjustments to approximate inflation, plus a one-time payment of $5 million. In August 1995, the NCRR board approved a 30-year lease, with Norfolk Southern Corp. holding an option for a 20-year renewal that requires a payment to the NCRR of more than $5 million to exercise.[4] The NCRR also would be restructured as a real estate investment trust (REIT), freeing it from state and federal corporate income tax.[5]

The announced agreement represents a significant improvement over the current lease, which produces rent of less than 1 percent of even the lowest assessment of the current value of the railroad's assets—$674,277 in 1994.[6]

Still, private shareholders have been quick to protest that the tentative deal fails to protect their interests. "It is way off the mark," says Marshall Johnson, a Greensboro stockbroker who has followed the NCRR for many years. ". . . It was negotiated on an arbitrary basis." One group of private shareholders is attempting to increase the return to private shareholders through a boycott of the shareholder meeting at which the new lease would be proposed for adoption.[7]

These shareholders are led by Walker Rucker, a Greensboro businessman who is the great, great grandson of John Motley Morehead, and Luther Hodges Jr., a former bank executive in Charlotte, a U.S. Senate candidate in 1978, and son of a highly



(above) Former Gov. John Motley Morehead (1841–45), first president of the North Carolina Railroad Co. *N.C. Division of Archives and History*

Steve Adams is a freelance writer living in Raleigh. He wrote about the North Carolina Railroad for Insight *in June 1983.*

regarded former North Carolina governor. They hope to negotiate a stock swap that would provide them a higher return on their investment than the announced lease would yield.

Hodges makes the case for a boycott in a letter to private shareholders attempting to round up support. "All of the shareholders, I am certain, are in favor of the continued economic development of North Carolina," writes Hodges. "It is unfair, however, for this economic development to be at the expense of the private shareholders who made an investment in anticipation of a properly negotiated lease. The state has, in fact, taken advantage of the minority shareholders."

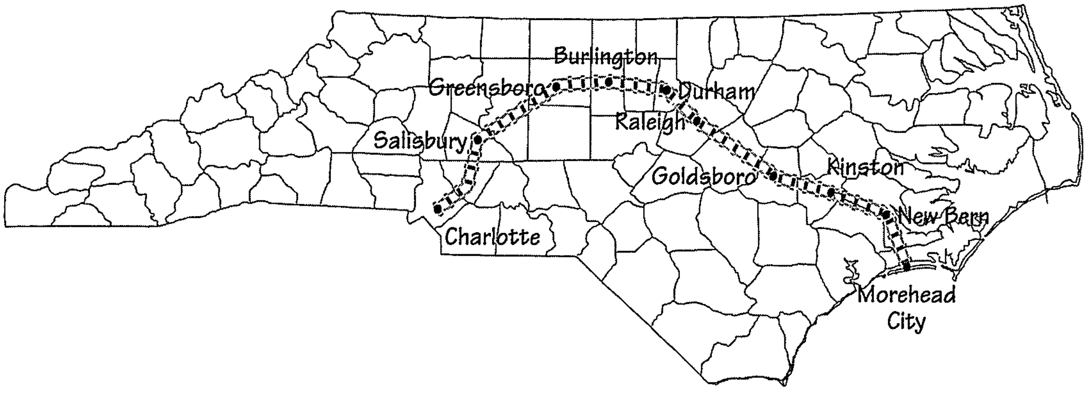
> ***—rivers are tunneled: trestles cross oozy swampland: wheels repeating the same gesture remain relatively stationary: rails forever parallel return on themselves infinitely.***
>
> ***The dance is sure.***
>
> —WILLIAM CARLOS WILLIAMS
> "OVERTURE TO A DANCE OF LOCOMOTIVES

Another group of private shareholders has chosen litigation over negotiation. These shareholders have filed suits in federal court alleging that the NCRR violated their right to a fair return in order to promote the state's economic development interests. The suits seek to block the lease agreement and to recover unspecified damages.[8]

Shortly after the tentative deal was announced, NCRR board president John McNair III rejected the contention by the private shareholders that the state is intentionally keeping lease rates low for economic development purposes. "If they've got a buyer who will pay more, I'd love to hear about it," McNair told the *News & Record* of Greensboro in one of his few public comments on the lease. "I've been trying to find one for 18 months."[9]

As the great philosopher Yogi Berra might have put it, it was deja vu all over again. A banner headline in the Aug. 17, 1895, edition of *The News & Observer* of Raleigh had called the original lease

Figure 1.
Map of the North Carolina Railroad



Gov. Jim Hunt (1977–85, 1993–present)

with Southern Railway Company "The Crime of a Century." That lease too had been negotiated in secrecy and announced to great controversy, according to an analysis published in *The News & Observer* nearly a century later in September 1985.

"The state went crazy," said Gerry Cohen, who in the mid-1980s staffed a Legislative Research Commission study on railroad operations and is now director of the legislature's Bill Drafting Division.[10] "There were legislative investigating commissions, threatened indictments, court suits, state officials trying to void the lease." The primary issues were secrecy, the speed with which the deal was consumated, and the low lease rate.

Even if the current lease negotiations are completed and the lawsuits resolved, key policy issues will remain. Can the NCRR, as a private corporation, balance its legal obligations to the state shareholders who want to use the railroad for economic development and to the private shareholders who want to make profits? Does the state, as majority shareholder, have enough power to advance public policy objectives? Does the railroad's status as a private corporation frustrate the public's—and even state officials'—right to know the public's business? Does the state control the NCRR's destiny—or should it?

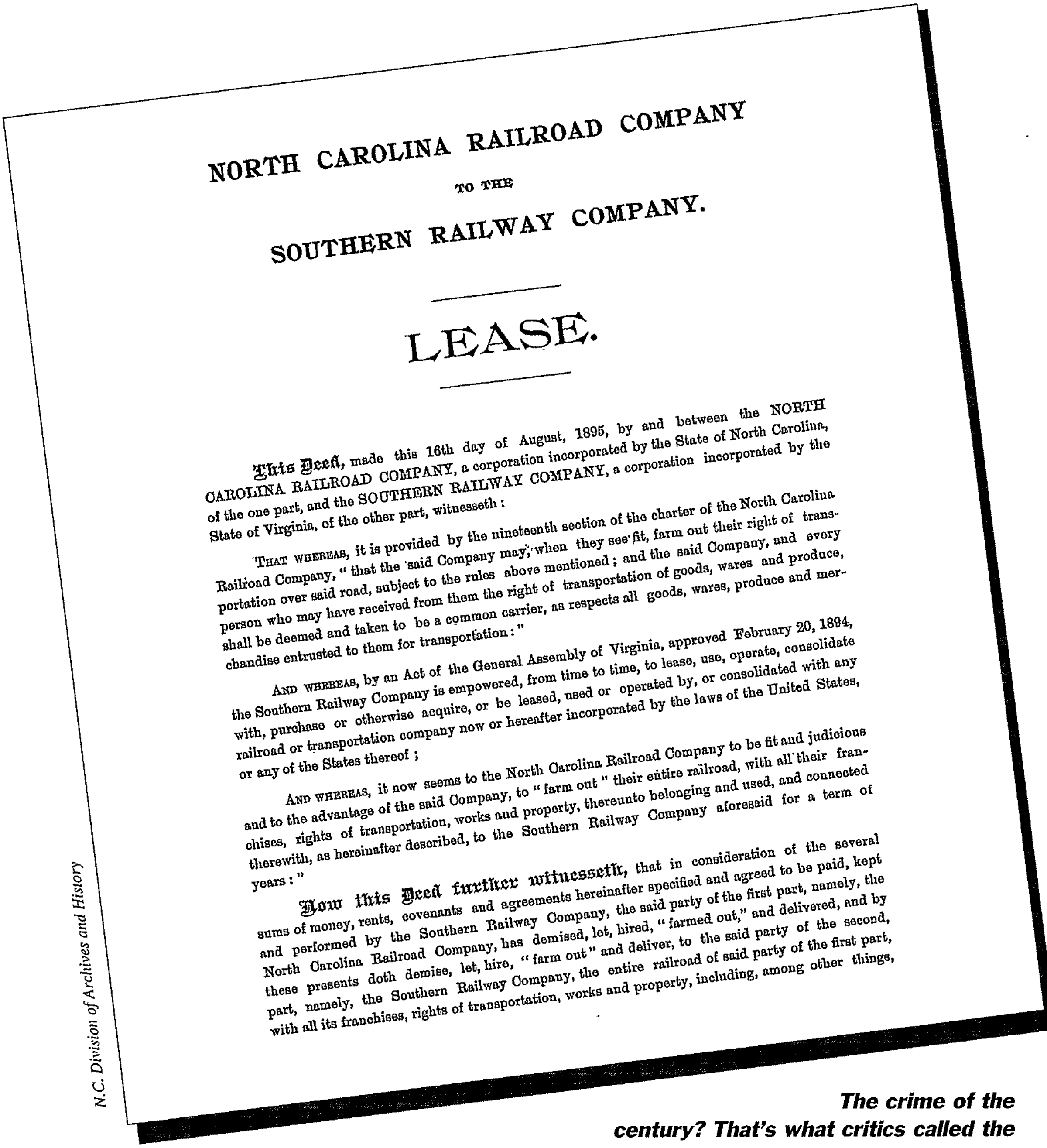
Two governors, Republican Jim Martin (1985–93) and Democrat Jim Hunt (1977–85, 1993–present), as well as the Council of State, have endorsed a study committee's proposal that the state buy out the private shareholders after the lease negotiations are settled in order to avoid such conflicts. But in more than 15 years of trying, the state has not adopted a clear policy.

What Is at Stake?

The state owns a majority interest in the NCRR because the state's initial investment made the railroad possible. During the 1850s, the legislature appropriated \$4.35 million of the \$5.8 million required to build what is now the NCRR. The rest was raised from private sources. Originally, the NCRR owned the tracks from Charlotte to Goldsboro; a sister company, the Atlantic and North Carolina Railroad, owned the tracks from Goldsboro to Morehead City.

In 1871, the NCRR leased its tracks to the Richmond and Danville Railroad Co., which later was taken over by Southern Railway. The original lease agreement was driven by rich northern promoters who wanted to create a single railroad line between Washington and New Orleans, says Allen W. Trelease, a historian and author of the book, *The*

Former Gov. Jim Martin (1985–93)



NORTH CAROLINA RAILROAD COMPANY

TO THE

SOUTHERN RAILWAY COMPANY.

LEASE.

This Deed, made this 16th day of August, 1895, by and between the NORTH CAROLINA RAILROAD COMPANY, a corporation incorporated by the State of North Carolina, of the one part, and the SOUTHERN RAILWAY COMPANY, a corporation incorporated by the State of Virginia, of the other part, witnesseth:

THAT WHEREAS, it is provided by the nineteenth section of the charter of the North Carolina Railroad Company, "that the said Company may, when they see fit, farm out their right of transportation over said road, subject to the rules above mentioned; and the said Company, and every person who may have received from them the right of transportation of goods, wares and produce, shall be deemed and taken to be a common carrier, as respects all goods, wares, produce and merchandise entrusted to them for transportation:"

AND WHEREAS, by an Act of the General Assembly of Virginia, approved February 20, 1894, the Southern Railway Company is empowered, from time to time, to lease, use, operate, consolidate with, purchase or otherwise acquire, or be leased, used or operated by, or consolidated with any railroad or transportation company now or hereafter incorporated by the laws of the United States, or any of the States thereof;

AND WHEREAS, it now seems to the North Carolina Railroad Company to be fit and judicious and to the advantage of the said Company, to "farm out" their entire railroad, with all their franchises, rights of transportation, works and property, thereunto belonging and used, and connected therewith, as hereinafter described, to the Southern Railway Company aforesaid for a term of years:"

Now this Deed further witnesseth, that in consideration of the several sums of money, rents, covenants and agreements hereinafter specified and agreed to be paid, kept and performed by the Southern Railway Company, the said party of the first part, namely, the North Carolina Railroad Company, has demised, let, hired, "farmed out," and delivered, and by these presents doth demise, let, hire, "farm out" and deliver, to the said party of the second part, namely, the Southern Railway Company, the entire railroad of said party of the first part, with all its franchises, rights of transportation, works and property, including, among other things,

N.C. Division of Archives and History

The crime of the century? That's what critics called the 1895 lease of the NCRR to Southern Railway company

North Carolina Railroad, 1849–1871, and the Modernization of North Carolina. The Greensboro-Charlotte segment was considered vital, but the promoters used as leverage the fact that they could create a parallel line. That same argument, says Trelease, was used in lease negotiations in 1895 and 1994.

In 1895, the NCRR signed a 99-year lease with Southern at a fixed rate of $286,000 a year. The A&NC operated independently and under leases to various railroads until 1939, when it leased its tracks to what later became a Southern Railway subsidiary. Southern became part of Norfolk Southern in 1982 when Southern consolidated with Norfolk and Western Railway.[11] The NCRR and the A&NC merged in 1989, with the NCRR acquiring its smaller sister company through an exchange of stock.

If the NCRR didn't exist, would the state build it now? Almost certainly not. And neither would Norfolk Southern. Nearly everyone agrees it would be cost prohibitive to acquire a 317-mile rail corridor that cuts a swath through some of the state's prime downtown real estate.

Would the state buy the NCRR if it were on the auction block at a lower price than the replacement cost? Probably not, at least if there were a private bidder. But the economic impact would be severe if the NCRR tracks, or even parts of them, actually went out of service.[12]

Why then, should the state be in the railroad business at all? Why not sell the state's shares in the NCRR, put the money to other uses, and let the market determine the NCRR's fate?

Although the NCRR has done little other than collect rent for more than a century, there are compelling reasons for the state to protect the future of the right-of-way as a matter of economic and transportation policy. The NCRR's tracks are the backbone of the state's east-west rail freight system, and they provide the only rail service available to the state port at Morehead City and the fledgling Global TransPark in Kinston, the state's planned rail, highway, and air cargo hub. The tracks also are critical to the state's plans to upgrade passenger train service between Raleigh and Charlotte, and they could become a link in a high-speed rail system connecting Atlanta to the Northeast corridor. Finally, they offer the potential for commuter rail service that otherwise would be prohibitively expensive, especially in the Research Triangle area.

In short, the NCRR is a virtually irreplaceable transportation corridor. The state has a vital interest in protecting it.

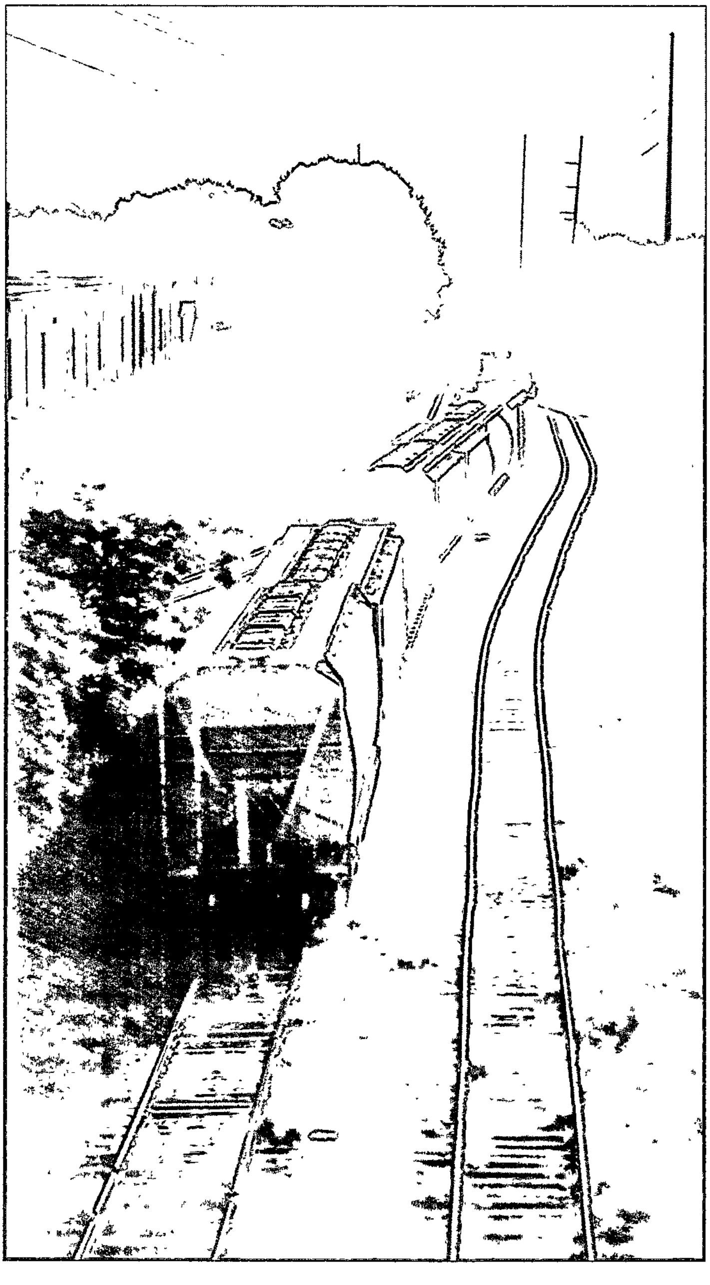
State Planning Derails

In 1979 and 1980, eight-and-a-half decades after the signing of the 1895 lease, the state's interest in the NCRR again began to percolate. The return on the state's investment was negligible, and the expiration of the leases in 1994 was close enough that the NCRR might have some room to maneuver. At least, legislators and state officials thought, the NCRR should position itself for the coming lease negotiations.

Early efforts produced little. In 1982, a legislative study commission helped bring four options into focus.[13] The state could:

- do nothing until the leases expired;
- buy out the private shareholders;
- sell the state's stock;
- or renegotiate the lease.

But the commission produced little more than a now-outdated appraisal. In 1985, the General Assembly created a negotiating commission to address the problem. A minor flap developed over whether the authority to conduct negotiations belonged to the NCRR board, the legislature, or the Council of State, the 10-member board of statewide


Karen Tam

elected officials. The dispute ultimately was resolved in favor of the NCRR board. Otherwise, the commission's efforts came to naught.

At that point no one even had an accurate inventory of the NCRR's holdings. Attorney C. Allen Foster of Greensboro, who was the railroad's general counsel from 1985 to 1989, recalls that when he took the job, the records were delivered in two cardboard boxes. "No one knew what we owned, what it was worth, what was being done with it, what would be done with it . . . and what had been done with it in the past," he says.[14]

The market for the NCRR's lightly traded over-the-counter stock also seemed confused. The price climbed from about $200 per share in 1981 to nearly $1,000 in mid-1985, and then soared to $5,500 in 1986—an increase of more than 500 percent in less than a year. Even at the time, no one seemed to have an explanation for the investors' optimism.[15] After a stock split in which 100 shares of stock were issued in exchange for each share of existing stock, the stock dropped to around $25 a share. That's roughly half the peak value of the NCRR stock when the stock split is taken into account. It has traded from the low $20 range to the mid $30 range ever since.

The merger of the NCRR and the A&NC in 1989 represented the only real progress in a decade of efforts by the state to chart a course for the railroad. The consolidation put the NCRR in position to negotiate a single lease. It also may have provided a measure of protection for the A&NC tracks east of Goldsboro, which are far less valuable to Norfolk Southern than the leg across the Piedmont.

The company finally had an accurate inventory of its holdings. The merger also placed a definite value on the new company. American Appraisal Associates evaluated the combined company as worth $151 million ($35.1 a share)[16] to Norfolk Southern. AAA said the railroad was worth $241.6 million, or $56.2 a share, if operated as an independent enterprise rather than leasing out its tracks, an option that has not been seriously considered. And the appraisers put the replacement cost—the amount it would take to build the NCRR from scratch—at $512 million ($119 a share). Private shareholders would later seize on that last number in their lawsuits.

Nevertheless, it soon would become clear that the state still was not in a position to control the upcoming lease negotiations directly. Aside from the merger, the state had adopted the 1982 commission's first option: do nothing.

I'm gonna ride, I mean, on that southbound passenger train. I'm gonna buy me a ticket as long as my arm. I'm gonna ride that train baby all night long.

—DOC WATSON

"SOUTHBOUND PASSENGER TRAIN"

A Conflict of Interest?

The state did not address the conflict between economic development policy and profitability directly until the eve of the new lease negotiations. In March of 1992, two months before the lease negotiations began, Gov. Martin appointed another study committee to determine whether the state should buy out the private shareholders. The committee was chaired by C.C. Cameron, retired chairman of First Union Corp. and former state budget director under Martin. "The governor became aware that there was a divergence between the interests of private individuals and the state's interest in economic development," said James Trotter, the governor's general counsel.[17]

David King, now deputy transportation secretary for public transportation, added: "The inherent conflict is that investors will want to improve that rate of return when it comes time to negotiate with (Norfolk) Southern, and they might give something away that could hurt the railroad. . . . The public interest is in the economic health, well-being, and development of North Carolina, especially its eastern region. What if Norfolk Southern offered to pay more if the NCRR allowed it to stop using the rail east of Raleigh? The shareholders would make money, but the citizens of the coast would suffer."[18]

In December 1992, the Cameron committee recommended that the state buy out the private shareholders. The proposal was endorsed the next month by the Council of State and in June 1993 by Gov. James B. Hunt Jr., Martin's successor.

The Cameron committee's analysis of the conflict between the NCRR's legal obligation to make profits for its private investors and the state's policy interests later would be quoted extensively in the lawsuits brought by private shareholders. "Through the creative management of the [NCRR]'s rail line, the State has the potential to exert a positive influence on economic development in North Carolina," the committee found. "A flexible lease structure could open new avenues for the productive use of the [NCRR] corridor.... Unlike the minority shareholders, the primary value of the [NCRR] to the State is not based on the monetary return on its investment, but on the ability to leverage [NCRR]'s assets to promote economic growth throughout the State."[19]

The committee found the NCRR's legal obligations to its private shareholders and to the public to be ambiguous. As a private corporation, it must maximize profits for shareholders. But because the state has granted it governmental powers, such as the right of eminent domain, it also has a legal obligation to serve its intended public purpose.

However, the committee found, "The case law does not address whether providing rail service to the citizens of North Carolina is merely ancillary to the private shareholders' rights to profit from their enterprise, or is a more fundamental purpose of the

Railroad's Ownership Structure Governs Lease Negotiations

The latest long-term lease for the North Carolina Railroad was negotiated in strict secrecy by a committee of the railroad's board dealing directly with the lessee, Norfolk Southern Corporation. State officials, from the governor on down, say they took a hands-off stance once the negotiations got underway, even though the state owns three-quarters of the stock in this multimillion dollar corporation.

Is this any way to run a railroad? Yes, according to the N.C. Attorney General's Office. In fact, says Deputy Attorney General Grayson Kelly, it's the *only* way to run a railroad with an ownership structure like the NCRR.

"There is no legal reason why the governor should or could be involved in the negotiations," says Kelly, who is representing the governor and the state in lawsuits filed over the announced lease agreement between the NCRR and Norfolk Southern. "As the major stockholder of a corporation, your power is limited to voting your shares."

Of course the governor has the authority to appoint the majority of the NCRR board, which would seem to give him power over the board's negotiating positions. But Kelly says even that power is circumscribed. "He could let his views be known to the directors, but the director's first duty is to the corporation." Legally, that leaves the state out of direct negotiations, and it limits the state's ability to pursue policy options that might hurt the profitability of the railroad.

This fiduciary responsibility to the corporation protects the interests of the private shareholders in the railroad. And it isn't their only protection. According to Kelly, the railroad's bylaws require a 50 percent vote of the private shareholders to ratify any substantial action.

That means opponents of the new lease can block its ratification if they can convince half the private shareholders to vote against it. "If they can get proxies or 50 percent of the private shareholders to vote against the lease, they [the NCRR] won't be able to ratify it," says Kelly.

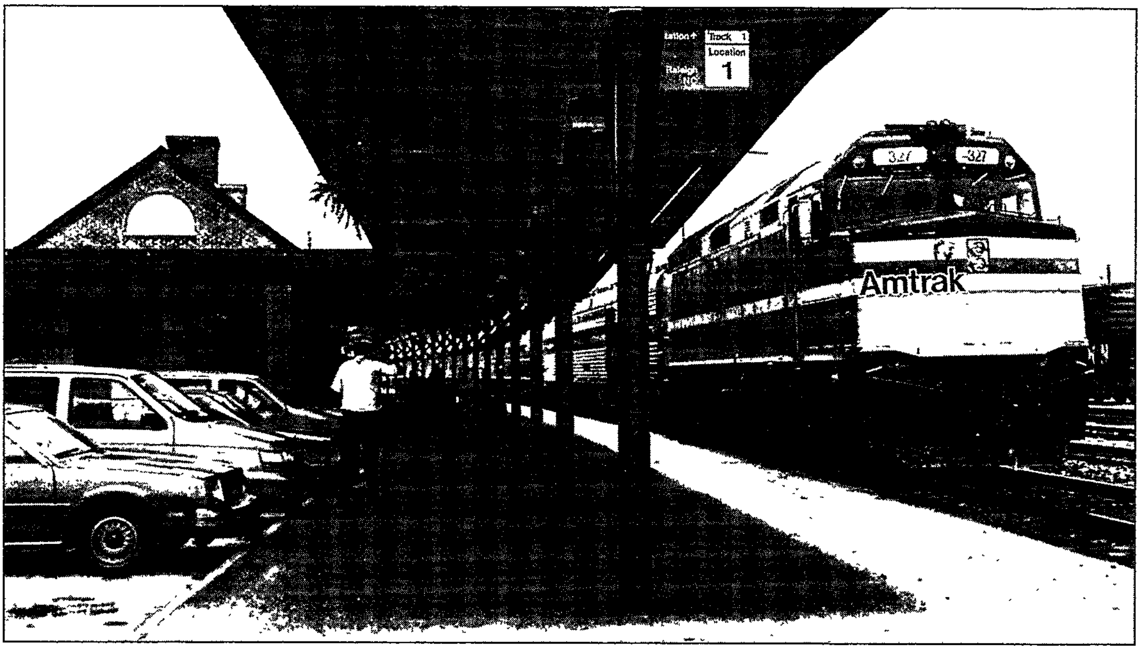
The state could resolve some of these issues by buying out the private shareholders. If the state were the sole shareholder, Kelly says, "it could define its interests however it wanted to."

An issue in discussion of a buy-out of private shareholders has been when such a buy-out would occur, Kelly says. The state wants a buy-out after the lease issue is settled, because a lease would help determine the value of the private shares. Private shareholders, if they want a buy-out at all, would prefer it to happen before the lease is settled in hopes of fetching a higher price for their shares.

The dispute is yet another illustration of the railroad's awkward ownership structure. "It's reached a point where I think it's going to have to be resolved eventually," says Kelly.

—*Mike McLaughlin*

Mike McLaughlin is editor of North Carolina Insight.



Karen Tam

The Amtrak station in Raleigh

[NCRR]."[20] The state has taken no further action on the committee's recommendation to buy out the private shareholders.

Attorneys for the plaintiffs in the private shareholder suits declined to discuss the details of the cases, but they found fertile material for their suits in the report. "Although the state would derive both direct and indirect benefits from ancillary economic growth, *the minority shareholders would derive no similar benefits*," two companion suits say.[21] The second pair of suits contend that the state directed the governor's appointees on the board "to cast aside the best interests of NCRR and its minority shareholders, and to negotiate a sweetheart lease with Norfolk [Southern] that will result in a lost opportunity for NCRR and a waste of corporate assets."[22]

Spokesmen for the NCRR and Norfolk Southern said their companies would not comment on pending suits. But Foster, the former NCRR general counsel, is no longer involved in the controversy on any side. Foster believes the courts will clarify the NCRR's obligations in striking a balance between the minority and majority shareholders. "It's remarkable how much clearer answers you get in litigation than you do otherwise," he says. In the end, the state simply failed to make a clear policy decision about how to manage its interest in the NCRR before the lease negotiations began.

Who Runs the Railroad?

State Treasurer Harlan Boyles, as the state's chief financial officer and a member of the Council of State, has been involved in negotiations over the fate of the railroad over a 15-year period. Boyles votes the state's shares in the railroad by proxy on behalf of the governor. Like other state officials, Boyles was cut out of the latest round of lease discussions for fear of violating federal Securities and Exchange Commission rules. But he has a long association with and interest in the railroad.

Boyles has changed his position on ownership structure. Early on, he advocated selling the state's shares and investing the proceeds. Later, he endorsed the Cameron committee's buyout proposal. Now, he asks, "What can you do with 100 percent of the railroad that you can't do with 75 percent of it?"

Boyles says he was simply reacting to a changing set of circumstances. "My early feeling was that something should be done to clear up the ownership and administration issues and that the state could earn a higher return by selling the asset and investing the proceeds elsewhere," says Boyles. "When asked by then Governor Jim Martin to support a proposal to buy out private shareholders, I did so, understanding that this would clear up the ownership issue once and for all. That proposal met with opposition from the private shareholders and

Who's the engineer on the Freedom Train?
Can a coal black man drive the Freedom Train?
Or am I still a porter on the Freedom Train?
Is there ballot boxes on the Freedom Train?
When it stops in Mississippi will it be made plain
Everybody's got a right to board the Freedom Train?

—LANGSTON HUGHES
"FREEDOM TRAIN"

my reaction was to question what, strictly from an ownership position, the state could do as 100 percent owners that we could not do as 75 percent owners?"

Two answers come to mind. First, if the state owned the railroad outright, it could pursue policy objectives. For instance, it could make financial concessions to Norfolk Southern, if necessary, without creating a conflict with private shareholders. This could be a tool for economic development, whether through lower freight rates or through negotiating to keep less profitable rail links open.

Second, the public's interest in open meetings and records could be better served. The lease negotiations have been conducted in strict secrecy by a committee appointed by the NCRR board. Apparently, not even the governor has been privy to the discussions.

The secrecy issue has contributed to a rift between the private shareholders and the state, Boyles says, creating distrust and spoiling what might have been a fruitful public-private partnership. "This situation has followed the advice of the attorney general of North Carolina," Boyles says. "Certainly, this fact has created misunderstandings and apprehensions about the negotiation process." As majority shareholder, the state can veto any agreement between NCRR and Norfolk Southern, but it has not been involved in the talks directly.

The state does exercise a strong influence on the NCRR through the governor's appointment of 10 of the 15 board members.[23] Gov. Hunt demonstrated that point emphatically in July 1993, when he demanded the resignations of five Martin appointees and replaced three others whose terms were expiring. Among those Hunt ousted was NCRR President E. Stephen Stroud, a prominent Raleigh commercial real estate broker and treasurer of the state Republican Party. Hunt replaced him with John F. McNair III of Winston-Salem, retired president and chief executive officer of Wachovia Corp.

Despite being forced from the board, Stroud still believes the state should buy out the private shareholders. "There are just a lot of things on the table that could conflict with private shareholder interests," says Stroud.

The public-private conflict quickly surfaced at the annual shareholders meeting at which Hunt's appointees were formally installed. Walker F. Rucker of Greensboro, whose family is the railroad's fourth-largest private shareholder, complained that Hunt wanted to keep Norfolk Southern's rental rate low in order to attract industry with lower freight rates. To judge from the "squeals and groans" of Norfolk Southern officials, the railroad was "being properly roped and branded" by the former board, he said.[24]

Brad Wilson, Hunt's legal counsel, countered that the governor had no hidden agenda and had no idea what stance the old board had taken. Rachel Perry, Hunt's press secretary, added: "Given the importance of this lease renegotiation, Gov. Hunt felt strongly that his leadership team be in place."

The governor or his staff may have given the new members instructions about the policy direction they were to take. And yet, neither Hunt nor Martin—nor anyone in either administration—has ever had any idea of the status of the negotiations, much less exercised any direct control over them, according to several officials interviewed for this article. The explanation is generally that the federal Securities and Exchange Act of 1934 and Securities and Exchange Commission regulations prohibit anyone with direct knowledge of such negotiations—or anyone proposing a tender offer, as the state may eventually do—from disclosing anything, either to shareholders or to the public.

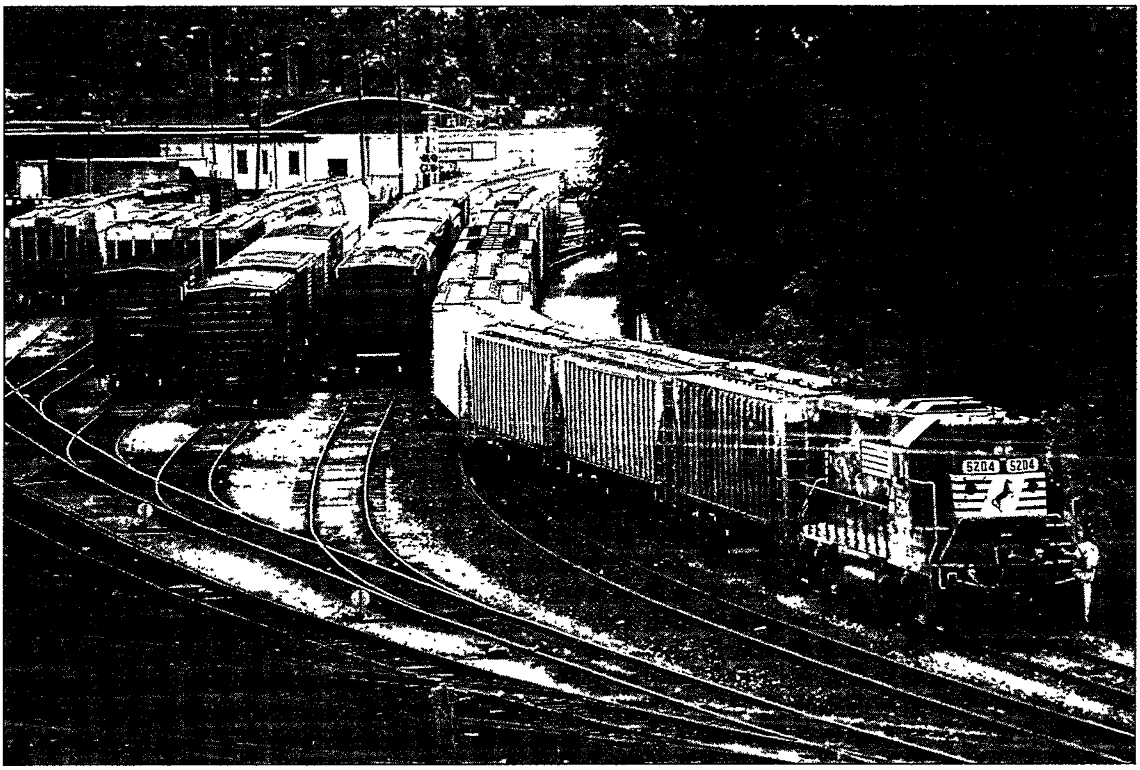
The Charlotte Observer, in a strongly worded editorial, had this to say on the subject:[25] "Gov. Morehead surely would be appalled to learn that while the state is the railroad's principal owner and majority stockholder, railroad directors have in effect told the state to butt out of negotiations for a new lease on the 317-mile railway. . . . Neither the SEC nor its attorneys are woodenly inflexible. Surely the state's attorneys could set up ground rules that abide by the spirit of the securities laws *and* make it possible for the state to be involved in the negotiations."

Gov. Hunt declined to be interviewed for this article, but Wilson confirms that the administration has not taken an active role in the lease negotiations. "Our primary role on issues relating to the board of directors took place in July [1993]," Wilson said in a mid-1994 interview. "Since then, our role has been very passive. It's in the hands of McNair and the board. I'm not privy to any policy decisions the board has made." In early 1995, after the shareholder suits were filed, he added, "We're doing exactly what our lawyers [in the attorney general's office] tell us to do, which is to say nothing and do nothing."

The state Department of Transportation, which is responsible for state rail planning, also has been cut out of the picture. "I have no idea what kind of positions have been made over there [in the governor's office]," says state rail planner Mark Sullivan. "We haven't heard anything since the new [Hunt] administration."

The Cameron committee's concern about the state's ability to manage the railroad's future apparently still holds: "The awkwardness of [NCRR]'s current ownership structure is highlighted by the current lease negotiations with Norfolk Southern. . . . [B]ecause of the [NCRR]'s reluctance to disclose to the State the details of its future plans or lease negotiations, the state is unable to ascertain whether or not its important interests are being promoted. Even though the state can insist that any final lease of the [NCRR]'s trackage rights be subject to shareholder approval, such after the fact review will not necessarily allow the State to insure that its interest in economic development and transportation will be protected."[26]

Freight still comes first over passenger service on Norfolk Southern tracks.



Karen Tam

Promoting Economic Development

Norfolk Southern and the state are both gung-ho about economic development. The railroad wants the freight traffic generated by new plants. The state wants the jobs and tax revenues. It also wants to help develop eastern North Carolina, which has been bypassed by much of North Carolina's recent growth.

Of 19 North Carolina counties that lost population during the 1980s, 15 were in eastern North Carolina—a region rife with poverty. The region remains heavily dependent on agriculture while the number of agricultural jobs continues to decline. And it has a heavy dependence on the military, where the threat of downsizing looms.[27] The state has high-hopes pinned to the Global TransPark in Kinston—at the heart of the distressed region. The railroad provides a crucial transportation link to the transpark,[28] as it does to the state port in Morehead City.

Morehead City, New Bern, and Kinston are among the cities that would suffer if Norfolk Southern dropped its rail service along the NCRR line in eastern North Carolina. "Frigidaire located its plant here several years ago because they saw the need to ship by rail," says Vernon H. Rochelle, a Kinston lawyer and former secretary to the A&NC Railroad.[29] "Rail isn't the main focus, but it's a very useful component in attracting business."

But the railroad plays an important role in the state's high-growth regions as well. When Hunt engineered his takeover of the NCRR board in 1993, some shareholders said that the governor probably just wanted to offer Mercedes-Benz a break on freight rates to persuade the German automaker to locate a proposed plant in Mebane—located along Interstate 85 in the heart of the industrialized Piedmont Crescent. After Hunt's coup at the annual shareholders meeting, Boyles, the state treasurer, said Hunt considered the NCRR a vital part of what turned out to be an unsuccessful pitch to Mercedes-Benz.[30]

But what if it were to turn out that the NCRR, or part of it, is worth more as real estate and scrap metal than it is to Norfolk Southern? East of Raleigh, Norfolk Southern makes a profit by operating on the NCRR tracks, but the freight traffic is marginal, compared with the tonnage shipped between Greensboro and Charlotte. The NCRR board could find itself in conflict over whether to make money or to serve public policy. The NCRR may actually be more critical to the state's interests than it is to Norfolk Southern's.

The state's rail system shrank from a peak of 5,522 miles in 1920 to 3,620 in 1991; 715 miles of rail were lost between 1971 and 1991. "Besides being detrimental to economic development, loss of rail corridors has potentially serious impact on the state's ability to meet its future transportation needs," a committee appointed by former Gov. Jim Martin found.[31] And while the freight industry has received rave coverage for increases in tonnage, revenues, and productivity in the business press, most of the growth has been in the Western United States. In fact, in the Eastern U.S., freight lines are operating at mid-1970s levels, while lines in the West have set new records nearly every year.[32]

In North Carolina, the NCRR tracks between Charlotte and Greensboro are a key section of Norfolk Southern's main system. East of Greensboro, and especially east of Raleigh, traffic drops off dramatically. "Between Greensboro and Charlotte, they [Norfolk Southern Co. officials] want it [the NCRR] badly," says David King, the deputy transportation secretary. "It's not a must-have situation. . . . They own an alternate right-of-way, but [upgrading it] would cost tens and arguably hundreds of millions of dollars. Between Greensboro and Raleigh, they're interested, but I would say only moderately. East of Raleigh I think their interest is muted, but it's not out-and-out disinterest."

The facts and figures bear out King's assessment that the tracks west of Greensboro are much more important to Norfolk Southern than tracks to the east. Norfolk Southern hauls 40 million tons of freight a year between Greensboro and Charlotte, compared with 10 million tons between Greensboro and Raleigh and 2 million tons between New Bern and Morehead City, according to Bill Schafer,

Ooh, midnight flyer—engineer won't you let your whistle moan

Ooh, midnight flyer—paid my dues and I feel like travelin' on.

—Paul Craft
"Midnight Flyer"

Good morning America, how are you?

Don't ya know me, I'm your native son.

I'm the train they call the City of New Orleans.

I'll be gone 500 miles when the day is done.

— STEVE GOODMAN
"CITY OF NEW ORLEANS"

director of strategic planning for Norfolk Southern. The lightest traffic on the NCRR is between Goldsboro and New Bern. Norfolk Southern has its own tracks that run roughly parallel and bypass Goldsboro and Kinston before rejoining the NCRR at New Bern, he says. But the Goldsboro-New Bern stretch of the NCRR serves Global TransPark at Kinston and is strategically important to the state's plans for the facility.

It is also significant that two appraisals in the 1980s put the value of at least some of the property much higher than it was worth to Norfolk Southern. The appraisals also emphasize how much more valuable, in a business sense, the Piedmont tracks are than those in the east. That raises the possibility that, just looking at the business angle, it might be more profitable for the NCRR to liquidate some or all of its assets than to continue leasing them.

In an appraisal prepared for the 1989 merger, American Appraisal Associates valued the NCRR, running from Charlotte to Goldsboro, at $141 million and the A&NC, from Goldsboro to Morehead City, at $10 million. Moreover, AAA found that if the railroads were operated as "independent enterprises" rather than leased to Norfolk Southern, they would be worth even more—$228 million for the NCRR and $13.6 million for the A&NC.[33]

In a 1982 appraisal commissioned by the legislature, Printon, Kane Research reached similar conclusions, although it put the total value of the railroads much lower. That study appraised the NCRR at about $72 million and the A&NC at about $1.8 million.[34] Later that year, Isabel H. Benham, president of Printon, Kane, told the Legislative Study Commission on Railroad Operations[35] that tracks from Goldsboro to Morehead City were worth more as scrap than to Southern because they were only marginally profitable. For shareholders, she said, "it would be just as great to scrap the property and get their $4 or $5 million and call it quits."[36]

Norfolk Southern has given no indication that it intends to abandon any of the NCRR. Even if it did, the state could buy the right-of-way and recruit a short line operator, as it often does when freight service is curtailed. There are also military interests that could come into play if the eastern segment of the rail line were threatened, due to the strong military presence in Eastern North Carolina. From a strictly business standpoint, however, the NCRR's private shareholders might have no particular interest in selling to the state if there were a higher bidder.

Thus, there is potential for a future conflict of interest on the NCRR board, even regarding freight operations. Robert Auman, a spokesman for Norfolk Southern, puts it succinctly: "What is really so important here is the industries that ship by rail, the people they employ, and the goods they produce."

Providing Passenger Service

State and regional rail planners are enthusiastic about increasing passenger service as a way to reduce the cost of building new highways and to reduce traffic congestion and pollution. But even the strongest proponents agree that increased passenger service will require substantial government subsidies. Whether the savings in government spending for roads would offset the costs is unresolved.

Two ambitious plans involving NCRR tracks have been put forward. One, by the state Department of Transportation, is to dramatically improve passenger service between Raleigh and Charlotte, ultimately making the rail line a link between the northeast corridor of the U.S. and Atlanta. The NCRR's Charlotte-Raleigh rail corridor is one of only five corridors nationwide designated by the U.S. Department of Transportation for development of high-speed passenger rail.[37]

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The Piedmont, the second of two state-sponsored passenger trains operating between Charlotte and Raleigh, was inaugurated in May 1995.

The other plan, proposed by the Triangle Transit Authority, is to create a $400 million commuter system linking Raleigh, Durham, and Chapel Hill by the year 2020. Charlotte has a longer-term commuter rail plan, but it would make minimal use of NCRR tracks. The city in fact became embroiled in a legal dispute with the NCRR when it proceeded with plans to build a new convention center on top of a long-abandoned rail line. While NCRR officials envisioned high-speed speed trains whisking through the center, Charlotte officials termed the idea "laughable." The city's commuter plans call for using a Norfolk-Southern line to the west of downtown.[38]

Both the Charlotte and Research Triangle area commuter proposals face major hurdles: cost, adequate numbers of passengers, political support, and, potentially, Norfolk Southern Corporation. "If you want Norfolk Southern to do business with you, you'll have to operate in the real world, just as we and our freight customers do," Bill Schafer of Norfolk Southern told a meeting of commuter planners in 1994. "For starters, assume that you'll have to provide the capacity for your trains. You will need long lead times, a pretty good banker, a great liability insurance carrier . . . and friendly politicians."[39]

Today, North Carolinians can ride the *Carolinian*, sponsored by the state and operated by Amtrak, between Raleigh and Charlotte—east in the morning, west in the evening. And they can ride the *Piedmont*, which began operating on the opposite schedule in May of 1995, making one-day round trips from Raleigh possible.

At an average speed of 48 mph, the pace is almost leisurely—slowed by the number of small towns en route, regulations governing speed, and track engineering. It takes these trains 3 hours and 40 minutes to travel the 175 miles between the two cities, about 40 minutes longer than it takes to drive.[40]

Of course, trains are capable of much greater speeds and have been for quite some time. The *Zephyr*, a diesel streamliner that made its maiden run from Denver to Chicago in 1934, could reach speeds of more than 110 mph and averaged more than 75 mph on a long haul. The train ran on a straight, signalled track across the open prairie, and at that time the railroads set their own speed limits. In Europe, passenger trains routinely reach 200 mph and are capable of even higher speeds.[41]

Gov. Hunt says he wants the travel time from Raleigh to Charlotte cut to 2 hours by the year

2000—an average speed of 87.5 mph. (In 1993, a study group appointed by Gov. Martin proposed building a new railroad to cut travel time to 1 hour 30 minutes. That, however, would require a new right-of-way, so the NCRR would not be involved.)

To reduce travel time to 2 hours would require a significant investment by the state. Federal law sets a speed limit of 79 mph without computerized signals in the engineer's cab, as opposed to beside the track. Installing those signals would cost about $73 million. In addition, tracks would have to be straightened and banked. Road crossings also would have to be improved or eliminated. To get from Raleigh to Charlotte in two hours, trains would have to run through small towns at 100 mph.[42] State transportation officials estimate that these improvements would cost an additional $100 million to $150 million.

These are not huge figures compared with the cost of highway construction. However, the state's *entire* rail program, of which the NCRR is only a part,[43] for fiscal 1994 through fiscal 1998 totals only $62.6 million. Only $17.6 million of that is for track and signal improvements—a fraction of the amount needed.

The Triangle Transit Authority's proposed regional rail system would be even more expensive: the $400 million price tag is roughly equivalent to what the state will spend to build the northern half of Raleigh's Outer Loop highway.[44] Still, says TTA Director Jim Ritchey, "Support for public transportation doesn't necessarily go down one side of the aisle or the other. There are a number of very conservative members of our board who believe this is a fiscally responsible proposal."

The first phase of the Triangle regional rail system would connect North Raleigh, Raleigh, and Durham. By 2002, the TTA hopes to operate self-contained diesel railway cars every 15 minutes in each direction, Ritchey says. The first phase would cost $149.5 million to develop and $8.6 million a year to operate. The system would use NCRR tracks to travel from downtown Raleigh to downtown Durham; CSX Transportation owns the North Raleigh tracks. Later phases, to be completed by 2020, could reach southeast to Garner and Smithfield and west to Burlington. No funding is in place.

No one suggests that either the DOT or the TTA proposals could be self-supporting. In addition, transportation planners generally agree that public transportation requires a critical level of population density to operate efficiently. Despite population growth across the Piedmont, both proposals face that problem. "There are some real questions about . . . how dense an area has to be to support urban transportation and how the population must be distributed to support inter-urban, high-speed rail," says Sheron Morgan, director of the Office of State Planning.[45]

Even if those financial and practical problems can be overcome, both the state and the TTA would have to arrange to use the tracks leased by Norfolk Southern. The railroad has formally expressed a general willingness to cooperate with passenger service, but with several important provisos:[46]

- Contracts with passenger services must provide a profit comparable to what Norfolk Southern earns on freight.
- Passenger service must not interfere with freight traffic.
- Norfolk Southern must be protected against any liabilities resulting from passenger accidents "regardless of cause."
- Passenger trains generally will not be allowed to exceed 79 mph on tracks that also carry freight.

"In a nutshell, we will be glad to negotiate with a passenger venture that satisfactorily addresses NS's requirements for safety, capacity, financial compensation, and liability," says Norfolk Southern's Schafer. "The acid test is that the value of our shareholders will be increased under such a deal."[47]

For the purpose of those negotiations, it won't make much difference who owns the NCRR tracks if Norfolk Southern holds a long-term lease. Unless the new lease includes provisions that haven't been disclosed, any arrangement with Norfolk Southern will be a straightforward business deal.

We are riding, on a railroad—
singing someone else's song
Forever standing, by that
crossroads—take a side and step
along.

—James Taylor
"Riding on a Railroad"

"It's not an unsurmountable hurdle," says Patrick Simmons, director of the state Rail Division. "Everything is negotiable."

Putting a Price on the NCCR

A question that remains unresolved is the worth of the NCCR. Appraisals range from a low of $72 million in Printon, Kane's 1982 evaluation to a high of $512 million, AAA's estimate of the railroad's replacement cost. The plaintiffs in the private shareholder suits have seized on the latter figure, but investors have never put their money behind an estimate that high.

At its peak in the mid-1980s, NCRR stock sold at the equivalent of $55 a share ($5,500 a share before the 100-to-1 stock split). That would put the market value of the railroad's 4.3 million shares at $236.5 million if one were to assume that all of it were on the market. In the early 1990s, the stock dropped to a low of $21, indicating a market value of $90.3 million. The stock was trading at about $36 a share until the tentative lease agreement was announced in November 1994. It tumbled 30 percent on news of the agreement,[48] but has since recovered to trade in the low- to mid-$30 range by July 1995.

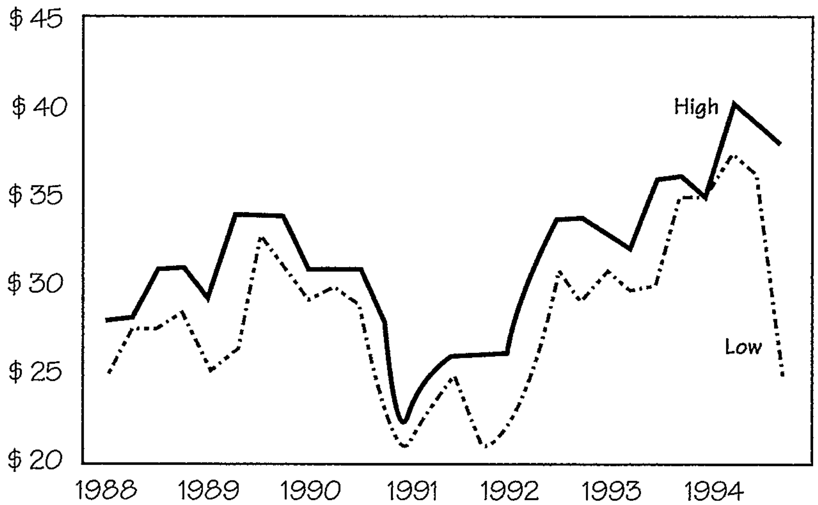
But as Marshall Johnson, the Greensboro stockbroker, points out, the price of a share of stock does not necessarily indicate the value of the stock in a buy-out. "The total is worth more than a piece," says Johnson. "A merger often pays far more than price."

Walker Rucker, the private shareholder leading the movement for a stock swap, believes any negotiated arrangement with the private shareholders should take into account the 1987 appraisal, plus inflation in real estate values of roughly 32 percent. "I'll accept the state making a sweetheart deal [with Norfolk Southern] if we get what we feel like our stock is worth based on the appraisal and inflation."

Boyles, the state treasurer, believes efforts to place a value on the NCRR have been flawed. He notes that they attempt "to place a value on something which, in all probability, can only be determined by a willing buyer and a willing seller."

But assuming that NCRR is able to sign a new lease with Norfolk Southern, the truth is that the NCRR is worth exactly what the lease is worth. As anyone who has ever leased a car knows, there is no appreciable difference between the present value of a lease and the value of the property; it's just a question of how to arrange the financing.

Figure 2.
North Carolina Railroad Stock Prices, 1988–1994



The plaintiffs make a point that the stock climbed as high as $40.50 in April 1994. In June 1995, the bid price for the stock was $30 a share, a total market value of $129 million if all 4.3 million shares were for sale.

It's anyone's guess how the market would respond if the state tried to buy out the private shareholders or decided to sell its shares. But at that price, the state's share is worth roughly $96.5 million, and the private shareholders' stock is worth about $32.5 million.

Meanwhile, for an investor who buys the stock at $30, the stock offers a cash return of about 6.5 percent under the proposed new lease. If one assumes that the property value and lease payments will increase by 4 percent per year, however, the return is about 11.5 percent.[49]

Is the pending lease agreement a sweetheart deal wired for Norfolk Southern from the start? That is what the private shareholders maintain. NCRR president John McNair rejects this notion. But the private shareholders are seeking satisfaction both through negotiations and through the courts based on their contention that the NCRR put other interests ahead of maximizing profits for the rail line.

Until the legal and lease issues are settled, it is difficult to say how much it would cost the state to buy out the private shareholders or how much the state would receive if it sold its shares. If the buyer turned out to be Norfolk Southern, which is at least a possibility, the railroad would not likely pay more than the value of the lease.

Conclusion

For 15 years, the state has been trying to decide what to do with the NCRR, and it still hasn't made up its mind. Sullivan, the state rail planner, compares the situation to a dog chasing an automobile: "I've never been able to figure out what I'd do with that car if I caught it." N.C. Secretary of Transportation Sam Hunt adds: "We don't have a plan for the corridor. That's what we're working on now."

It's a little late for that. Sam Hunt says he doesn't know what Jim Hunt's policy is on the railroad. Jim Hunt's office says it doesn't know what the NCRR negotiators are doing. It may be that the train is heading out of the switchyard toward another long-term lease that will give Norfolk Southern practically total control over the right-of-way. It may be that the deal will be sidetracked by the dispute with the private shareholders.

Well the big train keeps on rolling
Rolling on down the track.
And the way she's moving buddy
I don't believe she's ever coming back.

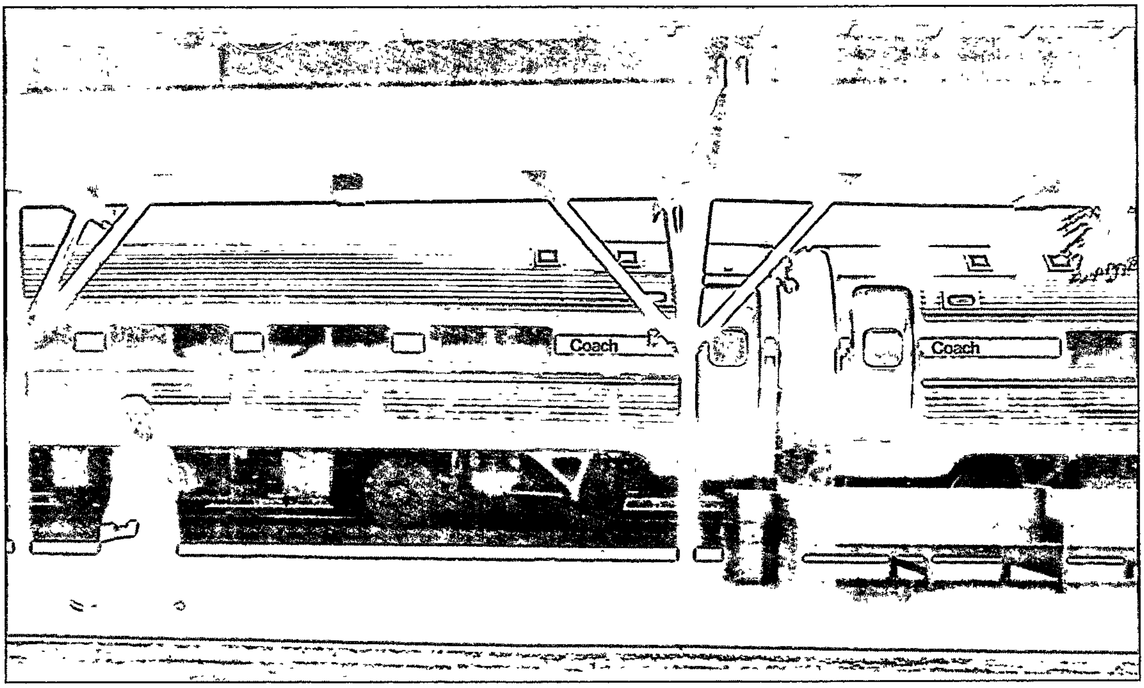
—Bob Seger
"Long Twin Silver Line"

Whatever the outcome of the lease negotiations, the fact remains that the current structure of the NCRR is unsatisfactory for both the state and the private shareholders. The conflict of interest between state public policy and the private shareholder's right to a maximum return will remain, whatever the terms of the lease. And it makes no sense for state officials to be in the dark about how the negotiations are proceeding. The state might want to appoint railroad experts to represent it, but if the state is not at the table, it can't control the railroad's destiny.

Even if the train has left the station for this round of negotiations, there will be more to come. In a political climate favoring cutting government and privatization, it might be tempting for the state to sell its shares in the NCRR. But the lesson of the 1895 lease is that seeking short-term financial gain is short-sighted. Selling the state's shares would produce a fairly modest windfall. It would be a one-time gain that would have little effect on the state's finances or tax rates.

Even though the state has failed to establish a policy on the NCRR, it basically knows what it needs to do. The General Assembly put it succinctly when it set up its ill-fated negotiating commission in 1985: "Any new lease should require that the lessee cooperate with innovative uses of the right of way, whether for fiber optics, intracity light rail (trolley) service, and passenger service."[50] Next time, maybe.

This is a long-term proposition. The state is still paying for its lack of foresight 100 years ago. Nevertheless, as Transportation Secretary Sam Hunt puts it, "Whatever you have to say bad about it, [the NCRR] has done a whole lot of good. It's been important for the last 100 years, and it will continue to be important for the next hundred years."



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FOOTNOTES

[1] For a comprehensive look at the early history of the North Carolina Railroad, see Allen W. Trelease, *The North Carolina Railroad, 1849–1871, and the Modernization of North Carolina*, The University of North Carolina Press, Chapel Hill, N.C., 1991. See also, *Report of the Governor's Special North Carolina Railroad Study Group*, Jan. 5, 1992, p. 2 ff.; Grady B. Jefferys, *The Tree of Life: A History of the North Carolina Railroad*, The North Carolina Railroad Co., Raleigh, N.C., 1972, p. 1 *ff.*; Steve Adams, "North Carolina's Railroads: Which Track for the Future?" *North Carolina Insight*, N.C. Center for Public Policy Research, Raleigh, N.C., Vol. 16, No. 1 (June 1983), pp 2–16.

[2] *Ibid.*, Jefferys, p. 1.

[3] One of the leases began in 1895 and expired December 31, 1994. The other began in 1939 and expired Jan. 1, 1995.

[4] Press release, "N.C. Railroad Co. Board Approves Norfolk Southern Lease," NCRR, Aug. 10, 1995. The $5 million one-time payment is to satisfy the requirement in an 1895 lease to Southern Railway Co. that the latter return the NCRR's property "in at least as good condition and repair" as it was at the beginning of the lease. The 1895 lease is described in the NCRR's annual reports and reproduced in full in *The Tree of Life*.

[5] REIT's, while maintaining public ownership of their shares, are required to pay about 95 percent of their net income in dividends to shareholders, according to a press release issued by the NCRR. For more, see "N.C. Railroad Co. Outlines Basic Terms of Rail and Property Lease with Norfolk Southern," North Carolina Railroad Co., Raleigh, N.C., Nov. 22, 1994, p. 2. According to published reports, only one other U.S. railroad is structured as an REIT, the Pittsburgh & West Virginia Railroad. This 27-year-old trust was formed to facilitate the acquisition of a small leased railroad (Kyle Marshall, "N.C. Railroad strikes $8 million deal with rail firm," *The News & Observer*, Raleigh, N.C., Nov. 24, 1994, p. 10C).

[6] North Carolina Railroad Company, 1994 Form 10-K, filed with the U.S. Securities and Exchange Commission, p. 17.

[7] Private shareholders appear to have succeeded in at least delaying a shareholder meeting at which the tentative lease agreement might have been ratified. NCRR Board President John McNair III, in a July 11, 1995, letter to NCRR shareholders, wrote that the July 1995 shareholder meeting had been postponed due to unresolved issues that precluded a final agreement with Norfolk Southern. In the letter, McNair made reference to the planned boycott of the shareholder meeting.

[8] *Werner, et al. Profit Sharing Plan v. John M. Alexander Jr. et al.; John H. Norberg Jr. et al. v. John McKnitt Alexander Jr. et al.; Alan Kahn et al. v. John McKnitt Alexander Jr. et al.; Edward Taran v. John M. Alexander Jr. et al.* All are shareholder derivative actions filed in U.S. District Court, Eastern District of North Carolina, Raleigh Division.

[9] As quoted in Jack Scism, "Lease renewal causes railroad's stock to fall," the *News & Record*, Greensboro, N.C., Nov. 30, 1994, p. B5.

[10] As quoted in Pat Stith, "Negotiations to begin on disposition of North Carolina's railroad stock," *The News & Observer*, Raleigh, N.C., Sept. 22, 1985, p. 1A.

[11] Adams, note 1 above, p. 5.

[12] In preparation for the 1989 merger of the NCRR and the A&NC, American Appraisal Associates estimated the replacement cost of the two railroads at $512 million. AAA evaluated the worth of the two railroads to Norfolk Southern at $151 million, which is approximately the figure on which the merger was based.

[13] *Railroad Operations*, Legislative Research Commission Report to the 1981 General Assembly of North Carolina, 1982 session, May 20, 1982, pp. 1–6, plus attachments.

[14] As quoted in Todd Cohen, "Politics plays its part in state railroad debate," *The News & Observer*, Raleigh, N.C., July 26, 1988, p. 3D.

[15] Steve Adams, "Tracking a hot stock: NCRR sells at $5,500, and no one's sure why," *Triangle Business*, Raleigh, N.C., April 7–14, 1986, p. 1.

[16] Per share values based on the 1987 appraisal were

included at the suggestion of Walker Rucker, a leader of the effort among the private shareholders to block the tentative lease agreement through a boycott. They are calculated by dividing the appraised value of the NCRR under various operating scenarios by the railroad's current 4.3 million shares of stock. Rucker believes a real estate inflation adjustment of approximately 32 percent would be necessary to bring the 1987 valuation up to date.

[17] As quoted in Kay McFadden, "N.C. Railroad faces conflict over its mission," *The News & Observer*, Raleigh, N.C., May 31, 1992, p. 1F.

[18] Cohen, note 14 above.

[19] *Report of the Governor's Special North Carolina Railroad Study Group*, December 1992, pp. 7–9.

[20] *Ibid.* at p. 5.

[21] *Werner* and *Taran*, note 8 above. *Kahn* and *Norberg* do not name the state as a defendant. *Werner* and *Taran* also cite GS 143B-361, which declares the state's interest in maintaining rail service, and the NCRR in particular, as "an integral and necessary part of a balanced transportation system."

[22] *Werner et al.* and *Norberg*, note 8 above.

[23] The remaining five members are elected by the private shareholders.

[24] For accounts of Hunt's appointments to the NCRR board, see Bernie Kohn, "Hunt maneuvers for rail line," *The Charlotte Observer*, Charlotte, N.C., July 8, 1993, p. 1D; Kohn, "POWER PLAY FOR RAILROAD: Hunt's nominees take over railroad in effort to spice up Mercedes bid," *The Charlotte Observer*, July 9, 1993, p. 6D; and David Ranii, "Hunt runs over N.C. Railroad, ousts board members," *The News & Observer*, Raleigh, N.C., July 8, 1993, p. 6C.

[25] "Troubled 'Tree of Life,'" unsigned editorial, *The Charlotte Observer*, December 7, 1992, p. 12A.

[26] *Report of the Governor's Special North Carolina Railroad Study Group*, p. 10.

[27] For more on growth patterns in North Carolina during the 1980s, see Ken Otterbourg and Mike McLaughlin, "North Carolina's Demographic Destiny: The Policy Implications of the 1990 Census," *North Carolina Insight*, Vol. 14, No. 4 (August 1993), pp. 2–49.

[28] For more on the proposed Global TransPark, see Tom Mather, "Air Cargo Complex: Flight or Fancy?" *North Carolina Insight*, Vol. 14, No. 2 (September 1992), pp. 26–57. This package features a pro-con discussion on the wisdom of the public's investment in the transpark, with the pro side written by former Gov. James G. Martin and the con side written by N.C. State University economist Michael L. Walden.

[29] As quoted in Kay McFadden, "N.C. Railroad faces conflict over its mission," *The News & Observer*, Raleigh, N.C., May 31, 1992, p. 1F.

[30] Kohn, "POWER PLAY FOR THE RAILROAD," note 24 above.

[31] *Report of the Governor's Rail Task Force*, January 1993, p. 22.

[32] *Railroad Facts*, 1992 edition, Economics & Finance Division, Association of American Railroads, Washington, D.C., pp. 13 and 27.

[33] The American Appraisal Associates report is cited in a joint proxy statement issued by the NCRR and A&NC, July 20, 1989, pp. 14–15.

[34] *Valuation of North Carolina Railroad Company and Atlantic and North Carolina Railroad Company*, Printon, Kane Research, Inc., New York, 1982, pp. 3–5.

[35] The study was authorized by Resolution 61 of the 1981 Session Laws and by House Bill 1599, Chapter 1372 of the 1981 Session Laws (Regular Session 1982).

[36] Stith, note 10 above.

[37] Associated Press, "Hunt OKs buying railroad company," *The Herald-Sun*, Durham, N.C., June 6, 1993, p. B10.

[38] Bernie Kohn, "Ghost track remains live issue: Railroad wants line rebuilt through convention center," *The Charlotte Observer*, Charlotte, N.C., Aug. 8, 1993, p. B1.

[39] Bill Schafer, text of remarks at the 3rd Annual Emerging Commuter Train Seminar, San Diego, Cal., Aug. 19, 1994, p. 8.

[40] Associated Press, "2nd Raleigh-Charlotte rail route questioned," *News & Observer*, Raleigh, N.C., Jan. 8, 1994. p. 4A.

[41] Mark Reutter, "The Lost Promise of the American Railroad," *Wilson Quarterly*, Washington, D.C., Vol. 18, No. 1 (winter 1994), pp. 10–35.

[42] *Report of the Governor's Rail Task Force*, note 31 above, pp. 18–19.

[43] N.C. Rail Division activities include: providing intercity passenger services; assisting shortline railroads to improve freight traffic; funding grants for rail spurs to serve industry; planning for future high-speed rail; preserving threatened corridors for future rail use; and restoring historic rail stations.

[44] Stephen Hoar, "Rail system pushed: Authority to offer plan at 8 meetings," *The News & Observer*, Raleigh, N.C., Jan. 29, 1995, p. 1B.

[45] Otterbourg and McLaughlin, note 27 above, p. 22.

[46] White paper titled, "Rail Passenger and Freight Services: Norfolk Southern Corporation's Policy," March 29, 1994, p. 1 *ff.*

[47] Schafer's remarks, note 39 above, p. 7.

[48] Scism, note 9 above.

[49] Internal rate of return calculated by the author.

[50] Stith, note 10 above.