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SESSION 1995

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HOUSE BILL 545

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Senate Judiciary II/Election Laws Committee Substitute Adopted 7/19/95

Senate Judiciary II/Election Laws Committee Substitute No. 2 Adopted 7/26/95

Short Title: Cartway Amendment.

(Public)

Sponsors:

Referred to:

March 27, 1995

A BILL TO BE ENTITLED

AN ACT TO BROADEN THE LAW PROVIDING FOR THE ESTABLISHMENT OF  
CARTWAYS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-68 reads as rewritten:

**"§ 136-68. Special proceeding for establishment, alteration or discontinuance of  
cartways, etc.; petition; appeal.**

The establishment, alteration, or discontinuance of any cartway, church road, mill road, or like easement, for the benefit of any person, firm, association, or corporation, over the lands of another, shall be determined by a special proceeding instituted before the clerk of the superior court in the county where the property affected is situated. Such special proceeding shall be commenced by a petition filed with said clerk and the service of a copy thereof on the person or persons whose property will be affected thereby. From any final order or judgment in said special proceeding, any interested party may appeal to the superior court for trial de novo and the procedure established under Chapter ~~40~~, 40A, entitled 'Eminent Domain,' shall be followed in the conduct of such special proceeding insofar as the same is applicable and in harmony with the provisions of this section."

1           Sec. 2. G.S. 136-69 reads as rewritten:

2 **"§ 136-69. Cartways, tramways, etc., laid out; procedure.**

3       ~~If~~ In order to ensure that all landowners who do not have a deeded or documented  
4 easement or right-of-way to a public road shall have a legal means of obtaining access to  
5 that road, if any person, firm, association, or corporation shall be engaged in the  
6 cultivation of any land or the cutting and removing of any standing timber, or the  
7 working of any quarries, mines, or minerals, or the operating of any industrial or  
8 manufacturing plants, or public or private cemetery, or the use of land as a single-family  
9 homestead, or taking action preparatory to the operation of any such enterprises, to which  
10 there is leading no public ~~road~~ road, reasonable deeded or documented easement or right-  
11 of-way to a public road, or other adequate means of transportation, other than a navigable  
12 waterway, affording necessary and proper means of ingress thereto and egress therefrom,  
13 such person, firm, association, or corporation may institute a special proceeding as set out  
14 in the preceding section (G.S. 136-68), and if it shall G.S. 136-68. Should it be made to  
15 appear to the court necessary, reasonable and just that such person shall have a private  
16 way to a public road or watercourse or railroad over the lands of other persons, the court  
17 shall appoint a jury of view of three disinterested freeholders to view the premises and  
18 lay off a cartway, tramway, or railway of not less ~~more~~ than 18 feet ~~in width,~~ of travel  
19 surface or such other minimum width requested in the petition and found necessary and  
20 proper by the court, and not more than 30 feet in width for cuts, fills, and ditches or  
21 cableways, chutes, and ~~flumes,~~ flumes. If a cartway is granted for the use of one or  
22 more single-family homesteads, each single-family homestead must consist of at least  
23 seven acres of land. Where there exists a private railroad crossing, that private railroad  
24 crossing may be used as part of a cartway established under this Article provided the  
25 person, firm, association or corporation seeking the cartway agrees to share  
26 proportionately with other landowners authorized to use the crossing the cost of  
27 maintaining the private crossing and to protect and hold harmless the railroad against all  
28 liability associated with the crossing, provided the railroad is being operated in a lawful  
29 manner at or in the vicinity of the crossing. Except as herein provided for the  
30 establishment of a cartway over an existing private railroad crossing, no real estate, right-  
31 of-way, easement, leasehold, or other interest in land which has been condemned by a  
32 railroad, or has been obtained for a railroad's use as a right-of-way, depot, or station  
33 house shall be used for the establishment of a cartway or other use under this Article  
34 except by agreement with the railroad. Should a petitioner seeking a cartway request a  
35 new railroad crossing, the railroad shall negotiate in good faith the location of the new  
36 crossing at the requested location or some other mutually agreeable location. The jury of  
37 view shall assess the damages the owner or owners of the land crossed may sustain  
38 thereby, and make report of their findings in writing to the clerk of the superior court.  
39 Exceptions to said report may be filed by any interested party and such exceptions shall  
40 be heard and determined by the clerk of the superior court. The clerk of the superior  
41 court may affirm or modify said report, or set the same aside and order a new jury of  
42 view. All damages assessed by a judgment of the clerk, together with the cost of the

1 proceeding, shall be paid into the clerk's office before the petitioners shall acquire any  
2 rights under said proceeding.

3 Where a tract of land lies partly in one county and partly in an adjoining county, or  
4 where a tract of land lies wholly within one county and the public road nearest or from  
5 which the most practical roadway to said land would run, lies in an adjoining county and  
6 the practical way for a cartway to said land would lead over lands in an adjoining county,  
7 then and in that event the proceeding for the laying out and establishing of a cartway may  
8 be commenced in either the county in which the land is located or the adjoining county  
9 through which said cartway would extend to the public road, and upon the filing of such  
10 petition in either county the clerk of the court shall have jurisdiction to proceed for the  
11 appointment of a jury from the county in which the petition is filed and proceed for the  
12 laying out and establishing of a cartway as if the tract of land to be reached by the  
13 cartway and the entire length of the cartway are all located within the bounds of said  
14 county in which the petition may be filed. A permissive use of a right-of-way or  
15 easement across the land of another shall not be a bar to the establishment of a cartway  
16 under this Article. In determining the path of a cartway, tramway or railway the jury of  
17 view shall give priority to the location of previously used easements or cartways."

18 Sec. 3. G.S. 136-70 reads as rewritten:

19 "**§ 136-70. Alteration or abandonment of cartways, etc., in same manner.**

20 Cartways or other ways established under this Article or heretofore established, may  
21 be altered, changed, or abandoned in like manner as herein provided for their  
22 establishment upon petition instituted by any interested party: ~~Provided, that all cartways,~~  
23 ~~tramways, or railways established for the removal of timber shall automatically terminate at the~~  
24 ~~end of a period of five years, unless a greater time is set forth in the petition and the judgment~~  
25 ~~establishing the same.~~ party. A cartway established under this Article shall not terminate  
26 until the time specified in the petition and as found necessary and proper by the court."

27 Sec. 4. This act is effective upon ratification and shall expire on July 1, 1997.  
28 This act applies to actions to establish cartways filed on or after the effective date, but  
29 before July 1, 1997.