

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 1038
Finance Committee Substitute Adopted 4/25/01
House Committee Substitute Favorable 11/28/01

Short Title: Public Right-of-Way Declaration.

(Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE LANDOWNERS TO INITIATE A SPECIAL PROCEEDING TO CLARIFY THE EXISTENCE OF A RIGHT-OF-WAY OPEN TO THE PUBLIC ADJACENT TO THEIR PROPERTY WHEN THE PUBLIC RECORDS ARE UNCLEAR CONCERNING THE ACTUAL EXISTENCE OF THE RIGHT-OF-WAY AND TO REQUIRE THE DEPARTMENT OF TRANSPORTATION TO CONDEMN LAND FOR SECONDARY ROAD PAVING OR MAINTENANCE PROJECTS WHEN SEVENTY-FIVE PERCENT OF THE ADJACENT LANDOWNERS AGREE TO PROVIDE NECESSARY RIGHT-OF-WAY FOR THE PROJECT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-96.1. Special proceeding to declare a right-of-way dedicated to public use.

(a) A special proceeding under Article 3, Chapter 1 of the General Statutes may be brought to declare a right-of-way dedicated to public use if:

(1) The landowners of the lots constituting two-thirds of the land abutting the right-of-way in question join in the action;

(2) The right-of-way is depicted on an unrecorded map, plat, or survey;

(3) The right-of-way has been actually open and used by the public; and

(4) At least one recorded deed recites the existence of the right-of-way.

(b) In a special proceeding brought pursuant to this section, the clerk of court shall issue an order declaring the right-of-way to be dedicated to public use upon finding that the provisions of subsection (a) of this section have been proven.

(c) Any right-of-way found to be dedicated to public use pursuant to this section that is proposed for addition to the State highway system shall meet the requirements of G.S. 136-102.6."

SECTION 2. G.S. 136-44.7 is amended by adding a new subsection to read:

1 "(c) When it is necessary for the Department of Transportation to acquire a right-
2 of-way in order to pave a secondary road or undertake a maintenance project, the
3 Department shall negotiate the acquisition of the right-of-way for a period of up to six
4 months. At the end of that period, if one or more property owners have not dedicated the
5 necessary right-of-way and at least seventy-five percent (75%) of the property owners
6 adjacent to the project and the owners of seventy-five percent (75%) of the road
7 frontage adjacent to the project have dedicated the necessary property for the right-of-
8 way and have provided funds required by Department rule to the Department to cover
9 the costs of condemning the remaining property, the Department shall initiate
10 condemnation proceedings pursuant to Article 9 of this Chapter to acquire the remaining
11 property necessary for the project."

12 **SECTION 3.** This act is effective when it becomes law.