

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 600
Agriculture/Environment/Natural Resources Committee Substitute Adopted 5/5/09
House Committee Substitute Favorable 6/4/09

Short Title: Condemnation of Conservation Easements. (Public)

Sponsors:

Referred to:

March 16, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE A DEMONSTRATION OF LACK OF PRUDENT AND FEASIBLE
3 ALTERNATIVE IN ORDER FOR PUBLIC CONDEMNORS TO CONDEMN
4 PROPERTY ENCUMBERED BY A CONSERVATION EASEMENT.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Chapter 40A of the General Statutes is amended by adding a new
7 Article to read as follows:

8 "Article 6.

9 "Condemnation of Property Encumbered by a Conservation Easement.

10 "**§ 40A-80. Applicability of Article; definition.**

11 (a) Applicability. – The provisions of this Article shall apply only to a condemnation
12 action initiated by a public condemnor, which for purposes of this Article shall be any entity
13 exercising the power of eminent domain under any authority except G.S. 40A-3(a).

14 (b) Definition. – As used in this Article only, the term "conservation easement" means
15 "conservation agreement" and "preservation agreement" as those terms are defined in
16 G.S. 121-35.

17 "**§ 40A-81. Additional information required in petition or complaint filed.**

18 Any public entity that acts to exercise the power of eminent domain on property
19 encumbered by a conservation easement shall initiate the action as required by this Chapter or
20 Chapter 136 of the General Statutes as applicable. The complaint filed as required by those
21 Chapters also shall include a statement that alleges that there is no prudent and feasible
22 alternative to condemnation of the property encumbered by the conservation easement.

23 "**§ 40A-82. Demonstration of no prudent and feasible alternative required in certain**
24 **actions; judicial determination.**

25 (a) If a holder of a conservation easement contests an action to condemn property
26 encumbered by a conservation easement on the basis that the condemnor failed to sufficiently
27 consider alternatives to the action or that a prudent and feasible alternative exists to the action,
28 the holder of the conservation easement may file an answer to the complaint within 30 days
29 from the date of service of the complaint as to that issue. If the holder of the conservation
30 easement does not assert that the condemnor failed to sufficiently consider alternatives to the
31 action or that a prudent and feasible alternative exists to the action, the holder of the
32 conservation easement may file an answer within 120 days from the date of service of the
33 complaint.

34 (b) If the holder of a conservation easement contests an action pursuant to subsection
35 (a) of this section, the judge shall hear and determine whether or not a prudent and feasible
36 alternative exists to condemnation of the property. The burden of persuasion on this issue is on



1 the condemnor if the holder of the conservation easement, after discovery, has identified at
2 least one alternative. If no alternative identified by the holder of the conservation easement is
3 adjudged prudent and feasible, then the condemnation action shall proceed under the provisions
4 of Article 3 of this Chapter. If the judge determines that a prudent and feasible alternative does
5 exist to condemnation of the property, the court shall dismiss the action and award the holder of
6 the conservation easement costs, disbursements, and expenses in accordance with
7 G.S. 40A-8(b). The procedure for this hearing shall be as set forth in G.S. 40A-47.

8 (c) A determination as to whether a prudent or feasible alternative exists to
9 condemnation of the property as set forth in subsection (b) of this section shall not be required
10 for actions meeting all of the following criteria:

- 11 (1) The Department of Transportation or the North Carolina Turnpike Authority
12 is the condemnor.
- 13 (2) Prior to filing the condemnation action, a review of the action was conducted
14 that considered the alternatives to the condemnation of the property
15 encumbered by the conservation easement and mitigation measures to
16 minimize the impact.
- 17 (3) The review was conducted pursuant to any of the following:
 - 18 a. The State Environmental Policy Act (SEPA), G.S. 113A-1, et seq.
 - 19 b. The National Environmental Policy Act (NEPA), 42 U.S.C. § 4321,
20 et seq.
 - 21 c. 49 U.S.C. § 303(f).

22 **"§ 40A-83. Vesting of title and right of possession.**

23 Notwithstanding the provisions of G.S. 40A-42 or G.S. 136-104, title and right to
24 immediate possession of property subject to this Article shall not vest in a condemnor any
25 earlier than any of the following:

- 26 (1) The failure of the easement holder to file an answer within the 30-day time
27 period established by G.S. 40A-82(a).
- 28 (2) Determination by the court that no prudent or feasible alternative exists to
29 condemnation of the property pursuant to G.S. 40A-82(b).
- 30 (3) Filing of the complaint and deposit in actions meeting all of the requirements
31 of G.S. 40A-82(c).

32 **"§ 40A-84. Compensation for condemnation.**

33 In any action to condemn property encumbered by a conservation easement, the court shall
34 determine just compensation pursuant to Article 4 of this Chapter as though no conservation
35 easement existed on the property. The court shall allocate the just compensation award between
36 or among any holders of the conservation easement and any owners of the property as provided
37 by the easement agreement or, if the agreement fails to address the issue, as the judge finds
38 equitable. Any party may demand trial by jury on the issue of total just compensation for the
39 taking."

40 **SECTION 2.** This act becomes effective October 1, 2009, and applies to
41 condemnation proceedings initiated on or after that date.