

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE DRH70409-MA-314 (04/10)

Short Title: Broaden Law Providing for Cartways.

(Public)

Sponsors: Representative Haire.

Referred to:

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. 136-69 reads as rewritten:

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

(a) If~~In~~ order to ensure that all landowners who do not have a deeded or documented easement or right-of-way to a public road shall have a legal means of obtaining access to that road, if any person, firm, association, or corporation shall be engaged in the cultivation of any land or the cutting and removing of any standing timber, or the working of any quarries, mines, or minerals, or the operating of any industrial or manufacturing plants, or public or private cemetery, or the use of land as a single-family homestead, or taking action preparatory to the operation of any such enterprises, to which there is leading no public ~~road~~road, reasonable deeded or documented easement or right-of-way to a public road, or other adequate means of transportation, other than a navigable waterway, affording necessary and proper means of ingress thereto and egress therefrom, such person, firm, association, or corporation may institute a special proceeding as set out in ~~the preceding section (G.S. 136-68), and if it shall~~ G.S. 136-68. Should it be made to appear to the court necessary, reasonable and just that such person shall have a private way to a public road or watercourse or railroad over the lands of other persons, the court shall appoint a jury of view of three disinterested freeholders to view the premises and lay off a cartway, tramway, or railway of not ~~less~~more than 18 feet ~~in width,~~ of travel surface or such other minimum width requested in the petition and found necessary and proper by the court, and not more than 30 feet in width for cuts, fills, and ditches or cableways, chutes, and ~~flumes, and flumes.~~ If a cartway is granted for the use of one or more single-family homesteads, each single-family homestead must consist of at least seven acres of land. Where there

1 exists a private railroad crossing, that private railroad crossing may be used as part of a
2 cartway established under this Article provided the person, firm, association, or
3 corporation seeking the cartway agrees to share proportionately with other landowners
4 authorized to use the crossing the cost of maintaining the private crossing and to protect
5 and hold harmless the railroad against all liability associated with the crossing, provided
6 the railroad is being operated in a lawful manner at or in the vicinity of the crossing.
7 Except as herein provided for the establishment of a cartway over an existing private
8 railroad crossing, no real estate, right-of-way, easement, leasehold, or other interest in
9 land which has been condemned by a railroad or has been obtained for a railroad's use
10 as a right-of-way, depot, or station house shall be used for the establishment of a
11 cartway or other use under this Article except by agreement with the railroad. Should a
12 petitioner seeking a cartway request a new railroad crossing, the railroad shall negotiate
13 in good faith the location of the new crossing at the requested location or some other
14 mutually agreeable location. The jury of view shall assess the damages the owner or
15 owners of the land crossed may sustain thereby, and make report of their findings in
16 writing to the clerk of the superior court. Exceptions to said report may be filed by any
17 interested party and such exceptions shall be heard and determined by the clerk of the
18 superior court. The clerk of the superior court may affirm or modify said report, or set
19 the same aside and order a new jury of view. All damages assessed by a judgment of the
20 clerk, together with the cost of the proceeding, shall be paid into the clerk's office before
21 the petitioners shall acquire any rights under said proceeding.

22 (b) **(See editor's note)** Compensation to the landowner for the establishment of a
23 cartway over the property of another shall be as provided in Chapter 40A Article 4 of
24 the North Carolina General Statutes.

25 (c) Where a tract of land lies partly in one county and partly in an adjoining
26 county, or where a tract of land lies wholly within one county and the public road
27 nearest or from which the most practical roadway to said land would run, lies in an
28 adjoining county and the practical way for a cartway to said land would lead over lands
29 in an adjoining county, then and in that event the proceeding for the laying out and
30 establishing of a cartway may be commenced in either the county in which the land is
31 located or the adjoining county through which said cartway would extend to the public
32 road, and upon the filing of such petition in either county the clerk of the court shall
33 have jurisdiction to proceed for the appointment of a jury from the county in which the
34 petition is filed and proceed for the laying out and establishing of a cartway as if the
35 tract of land to be reached by the cartway and the entire length of the cartway are all
36 located within the bounds of said county in which the petition may be filed. A
37 permissive use of a right-of-way or easement across the land of another shall not be a
38 bar to the establishment of a cartway under this Article. In determining the path of a
39 cartway, tramway, or railway, the jury of view shall give priority to the location of
40 previously used easements or cartways."

41 **SECTION 2.** G.S. 136-70 reads as rewritten:

42 **"§ 136-70. Alteration or abandonment of cartways, etc., in same manner.**

43 Cartways or other ways established under this Article or heretofore established, may
44 be altered, changed, or abandoned in like manner as herein provided for their

1 establishment upon petition instituted by any interested party: ~~Provided, that all~~
2 ~~cartways, tramways, or railways established for the removal of timber shall~~
3 ~~automatically terminate at the end of a period of five years, unless a greater time is set~~
4 ~~forth in the petition and the judgment establishing the same.~~ A cartway established
5 under this Article shall not terminate until the time specified in the petition and as found
6 necessary and proper by the court."

7 **SECTION 3.** This act is effective when it becomes law and expires on July
8 1, 2012. This act applies to actions to establish cartways filed on or after the effective
9 date, but before July 1, 2012.