

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
House Committee Substitute #2 Favorable 7/6/09

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. –

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

16 (2) Except with respect to G.S. 40A-84, the provisions of this Article shall not
17 apply to those circumstances in which: (i) the terms of the conservation
18 easement provide an express exception for uses, purposes, and rights that
19 may be subject to condemnation in the future, or circumstances in which the
20 condemnation action to be taken would not extinguish, restrict, or impair the
21 property rights of the holder of the conservation easement. "Property rights"
22 as used herein shall include the purposes for which the easement was
23 created; and (ii) a local public condemnor or other public condemnor under
24 G.S. 40A-3 is constructing, enlarging, or improving electric distribution
25 systems; gas production, storage, transmission, and distribution systems;
26 water supply and distribution systems; wastewater collection, treatment, and
27 disposal systems of all types; storm sewer and drainage systems; or trails
28 associated with greenways. In condemnation actions exempt pursuant to this
29 subdivision, a condemnor shall make reasonable efforts, after completion of
30 the project for which the condemnation was undertaken, to return the
31 property to the condition that the property existed in prior to condemnation
32 to the extent practicable.

33 (b) Definition. – As used in this Article, the term "conservation easement" means a
34 conservation or historic preservation easement that meets all of the following criteria, as each



1 of the criteria are defined under 26 U.S.C. § 170(h): (i) a qualified real property interest, (ii)
2 held by a qualified organization, and (iii) exclusively for conservation purposes.

3 **"§ 40A-81. Additional information required in petition or complaint filed.**

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

9 **"§ 40A-82. Demonstration of no prudent and feasible alternative required in certain**
10 **actions; judicial determination.**

11 (a) If a holder of a conservation easement contests an action to condemn property
12 encumbered by a conservation easement on the basis that the condemnor failed to sufficiently
13 consider alternatives to the action or that a prudent and feasible alternative exists to the action,
14 the holder of the conservation easement may file an answer to the complaint within 30 days
15 from the date of service of the complaint as to that issue. If the holder of the conservation
16 easement does not assert that the condemnor failed to sufficiently consider alternatives to the
17 action or that a prudent and feasible alternative exists to the action, the holder of the
18 conservation easement may file an answer within 120 days from the date of service of the
19 complaint.

20 (b) If the holder of a conservation easement contests an action pursuant to subsection
21 (a) of this section, the judge shall hear and determine whether or not a prudent and feasible
22 alternative exists to condemnation of the property. The burden of persuasion on this issue is on
23 the condemnor if the holder of the conservation easement, after discovery, has identified at
24 least one alternative. If no alternative identified by the holder of the conservation easement is
25 adjudged prudent and feasible, then the condemnation action shall proceed under the provisions
26 of Article 3 of this Chapter, or Article 9 of Chapter 136 of the General Statutes, as applicable.
27 If the judge determines that a prudent and feasible alternative does exist to condemnation of the
28 property, the court shall dismiss the action and award the holder of the conservation easement
29 costs, disbursements, and expenses in accordance with G.S. 40A-8(b) or G.S. 136-119, as
30 applicable, except that attorneys' fees may not be awarded. The procedure for this hearing shall
31 be as set forth in G.S. 40A-47 or G.S. 136-108, as applicable.

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

- 35 (1) The Department of Transportation or the North Carolina Turnpike Authority
36 is the condemnor.
- 37 (2) Prior to filing the condemnation action, a review of the project for which the
38 property is being condemned was conducted that considered the alternatives
39 to the condemnation of the property encumbered by the conservation
40 easement and mitigation measures to minimize the impact. The condemnor
41 shall, in the complaint filed with the court, identify the alternatives and
42 mitigation measures considered with regard to condemnation of the property
43 encumbered by the conservation easement.
- 44 (3) The review was conducted pursuant to any of the following:
- 45 a. The State Environmental Policy Act (SEPA), G.S. 113A-1, et seq.
46 b. The National Environmental Policy Act (NEPA), 42 U.S.C. § 4321,
47 et seq.
48 c. 49 U.S.C. § 303.

49 **"§ 40A-83. Vesting of title and right of possession.**

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

4 (1) The failure of the easement holder to file an answer within the 30-day time
5 period established by G.S. 40A-82(a).

6 (2) Determination by the court that no prudent or feasible alternative exists to
7 condemnation of the property pursuant to G.S. 40A-82(b).

8 (3) Filing of the complaint and deposit in actions meeting all of the requirements
9 of G.S. 40A-82(c).

10 **"§ 40A-84. Compensation for condemnation.**

11 In any action to condemn property encumbered by a conservation easement, the court shall
12 determine just compensation pursuant to Article 4 of this Chapter or in accordance with
13 Chapter 136 of the General Statutes, as applicable, by first determining the value of the
14 property taken as a whole, unencumbered by the conservation easement, as well as any other,
15 separately owned interest in the property. The court shall allocate the just compensation award
16 between or among any holders of the conservation easement and any owners of the property as
17 provided by the easement agreement or, if the agreement fails to address the issue, as the judge
18 finds equitable based upon evidence to include the opinion of a real estate valuation expert with
19 experience in the valuation of conservation easements. Any party may demand trial by jury on
20 the issue of total just compensation for the taking.

21 **"§ 40A-85. Appeal.**

22 The parties shall have a right of appeal as provided in G.S. 40A-13."

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