

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2009

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HOUSE BILL 1080\*

Short Title: Condemnation of Conservation Easements. (Public)

Sponsors: Representatives Samuelson, Harrison, Allen, Rhyne (Primary Sponsors); Adams, M. Alexander, Blue, Brisson, Brown, Burris-Floyd, Carney, Coates, Current, England, Farmer-Butterfield, Fisher, E. Floyd, Gillespie, Glazier, Goforth, Goodwin, Hall, Hill, Holliman, Hughes, Insko, Jackson, Jeffus, Justice, Luebke, Martin, McComas, McCormick, Parmon, Rapp, Ross, Starnes, Steen, Tarleton, Underhill, Weiss, and Wilkins.

Referred to: Judiciary I, if favorable, Environment and Natural Resources, if favorable, Appropriations.

April 6, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE A DEMONSTRATION OF LACK OF PRUDENT AND FEASIBLE ALTERNATIVE IN ORDER FOR PUBLIC CONDEMNORS TO CONDEMN PROPERTY ENCUMBERED BY A CONSERVATION EASEMENT AND TO REQUIRE ADDITIONAL COMPENSATION TO HOLDERS OF CONDEMNED CONSERVATION EASEMENTS.

Whereas, North Carolina is losing natural areas, historic sites, and agricultural and forestry lands at a rate of over 100,000 acres per year;

Whereas, concurrent with this rapid pace of development within the State, the public is investing substantial resources in conservation easements;

Whereas, conservation easements are frequently used by land trusts and government agencies to restrict the development and use of land in order to preserve the land's natural, open, scenic, historic, or ecological features;

Whereas, North Carolina's waters, open lands, and historic properties are critical to our State's economic future and quality of life;

Whereas, as stated in Section 5 of Article XIV of the Constitution of North Carolina, it is the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry;

Whereas, G.S. 113A-241(a) provides, "The State of North Carolina shall encourage, facilitate, plan, coordinate, and support appropriate federal, State, local, and private land protection efforts so that an additional one million acres of farmland, open space, and conservation lands in the State are permanently protected by December 31, 2009."; and

Whereas, federal and State tax policies encourage grants of conservation easements; Now, therefore,

The General Assembly of North Carolina enacts:

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

"Article 6.

"Condemnation of Property Encumbered by a Conservation Easement.

"§ 40A-80. Applicability of Article.



1        The provisions of this Article shall only apply to condemnation actions initiated by public  
2 condemnors.

3 **"§ 40A-81. Demonstration of no prudent and feasible alternative required.**

4        Any public entity that is authorized to exercise the power of eminent domain under the  
5 General Statutes shall not exercise the power of eminent domain on property encumbered by a  
6 conservation easement unless the entity first demonstrates that there is no prudent and feasible  
7 alternative to the action.

8 **"§ 40A-82. Additional information required in petition or complaint filed.**

9        Any public entity that acts to exercise the power of eminent domain on property  
10 encumbered by a conservation easement shall initiate the action as required by Chapter 40 of  
11 the General Statutes or Chapter 136 of the General Statutes as applicable. The complaint or  
12 declaration of taking filed as required by those Chapters shall also include a statement that  
13 describes in detail and with information sufficient to demonstrate that there is no prudent and  
14 feasible alternative to condemnation of the property encumbered by the conservation easement.

15 **"§ 40A-83. Judicial determination as to prudent and feasible alternative; reimbursement**  
16 **costs.**

17        A judge of the superior court in the district where the cause is pending shall hear and  
18 determine whether or not a prudent and feasible alternative exists to condemnation of the  
19 property encumbered by a conservation easement. If the court determines that a prudent and  
20 feasible alternative exists to condemnation of the property, the court shall, in addition to any  
21 costs that may be awarded by law, award to the holder of the conservation easement as part of  
22 the judgment, after appropriate findings of fact, reasonable attorneys' fees and costs, including,  
23 without limitation, reasonable surveying, engineering, and appraisal costs.

24 **"§ 40A-84. Compensation for condemnation.**

25        (a) In any action to condemn property encumbered by a conservation easement, the  
26 conservation easement shall be treated as a separately compensable property interest. The  
27 owner of the property encumbered by the easement shall be compensated for the fair market  
28 value of the property as encumbered by the conservation easement; the holder of the  
29 conservation easement shall be compensated for the fair market value of the easement. The  
30 judge shall hear and determine the issue of fair market value based upon evidence to include at  
31 least one appraisal performed by an appraiser with experience in valuation of conservation  
32 easements. The court may assess costs and the parties shall have a right of appeal as provided  
33 in G.S. 40A-13.

34        (b) In condemnation actions commenced in which the condemnor seeks less than fee  
35 simple interest in the entire property, including condemnations for rights-of-way, or seeks to  
36 condemn less than the entire property, the court shall determine to what extent, if any, the  
37 partial taking of the property will impair the conservation value of the conservation easement  
38 for purposes of determining appropriate compensation to the holder of the easement.

39        (c) In addition to the compensation due to the holder of the conservation easement  
40 pursuant to subsection (a) or (b) of this section, the condemnor shall be required to pay the  
41 holder of the easement an additional amount equal to twenty-five percent (25%) of the value of  
42 the conservation easement in order to reimburse costs incurred by the holder of the  
43 conservation easement in locating and acquiring a substantially similar conservation easement  
44 or otherwise using the proceeds in a manner consistent with the purposes of the conservation  
45 easement."

46        **SECTION 2.** This act becomes effective July 1, 2009, and applies to condemnation  
47 proceedings initiated on or after that date.