

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE DRS35128-RI-6 (02/04)

Short Title: Condemnation of Conservation Easements. (Public)

Sponsors: Senator Clodfelter.

Referred to:

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 AND TO
5 REQUIRE ADDITIONAL COMPENSATION TO HOLDERS OF CONDEMNED
6 CONSERVATION EASEMENTS.

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

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

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

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

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

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

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

24 Now, therefore,

25 The General Assembly of North Carolina enacts:

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

28 "Article 6.

29 "Condemnation of Property Encumbered by a Conservation Easement.

30 "**§ 40A-80. Applicability of Article.**

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

33 "**§ 40A-81. Demonstration of no prudent and feasible alternative required.**

34 Any public entity that is authorized to exercise the power of eminent domain under the
35 General Statutes shall not exercise the power of eminent domain on property encumbered by a



1 conservation easement unless the entity first demonstrates that there is no prudent and feasible
2 alternative to the action.

3 **"§ 40A-82. 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 Chapter 40 of
6 the General Statutes or Chapter 136 of the General Statutes as applicable. The complaint or
7 declaration of taking filed as required by those Chapters shall also include a statement that
8 describes in detail and with information sufficient to demonstrate that there is no prudent and
9 feasible alternative to condemnation of the property encumbered by the conservation easement.

10 **"§ 40A-83. Judicial determination as to prudent and feasible alternative; reimbursement**
11 **costs.**

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

19 **"§ 40A-84. Compensation for condemnation.**

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

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

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

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