

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2009**

**Legislative Fiscal Note**

**BILL NUMBER:** Senate Bill 600 (Fourth Edition)

**SHORT TITLE:** Condemnation of Conservation Easements.

<b>FISCAL IMPACT</b>					
	<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2009-10</u></b>	<b><u>FY 2010-11</u></b>	<b><u>FY 2011-12</u></b>	<b><u>FY 2012-13</u></b>	<b><u>FY 2013-14</u></b>
<b>REVENUES</b>					
DENR	\$0	\$0	\$0	\$0	\$0
AOC			Indeterminate fiscal impact		
<b>EXPENDITURES</b>					
DENR	\$0	\$0	\$0	\$0	\$0
AOC			Indeterminate fiscal impact		
<b>POSITIONS (cumulative):</b>					
DENR	0	0	0	0	0
AOC			Indeterminate positions required		
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b>					
Department of Environment and Natural Resources (DENR)					
Administrative Office of the Courts (AOC)					
<b>EFFECTIVE DATE:</b> October 1, 2009					

**BILL SUMMARY:**

S.B. 600, Condemnation of Conservation Easements, would generally require public condemners acting to exercise the power of eminent domain over property encumbered by a conservation easement to demonstrate that there is no prudent and feasible alternative to condemnation of the property encumbered by the conservation easement. Public condemners (except as noted below) would be required to include in the complaint filed a statement alleging that there is no prudent and feasible alternative to condemnation of the property in question. If the holder of an easement contests a condemnation action on the basis that the condemner failed to sufficiently consider alternatives to the action or that a prudent and feasible alternative exists, a judge would hear and determine whether or not a prudent and feasible alternative existed. If the judge determined that a prudent and feasible alternative did exist, the court would be required to dismiss the condemnation action and award costs to the easement holder.

S.B. 600 directs that the court must first determine the value of the property taken as a whole, unencumbered by the conservation easement, and then apportion the award between or among any holders of the conservation easement and any owners of the property. If the agreement fails to address the issue, as the judge finds equitable based upon evidence to include the opinion of a real estate valuation expert with experience in the valuation of conservation easements.

S.B. 600 provides for several exemptions:

- Except with respect to the compensation provisions described below, the provisions of the new Article would not be applicable to circumstances in which the terms of the easement provided an express exception for uses that may be subject to condemnation in the future, or circumstances in which the condemnation action would not extinguish, restrict, or impair the property rights of the easement holder.
- The provisions would not be applicable to actions commenced for certain public enterprise activities. Condemners exempt under these circumstances, however, would still be obligated to make reasonable efforts (after completion of the project for which the condemnation was undertaken) to return the property to the condition that the property existed in prior to condemnation to the extent practicable.
- A judicial determination concerning whether a prudent and feasible alternative existed would not be required in cases involving the State's Department of Transportation (DOT) or the Turnpike Authority, where a review of the action was conducted pursuant to the State Environmental Policy Act (SEPA) or the National Environmental Policy Act (NEPA), or under a provision of the federal Department of Transportation Act (which stipulates that the Federal Highway Administration and other Department of Transportation agencies cannot approve the use of land from publicly owned parks, recreational areas, wildlife and waterfowl refuges, or public and private historical sites unless the following conditions apply: (i) there is no feasible and prudent alternative to the use of land; and (ii) the action includes all possible planning to minimize harm to the property resulting from use).<sup>1</sup>

#### **ASSUMPTIONS AND METHODOLOGY:**

##### Department of Environment and Natural Resources

S.B. 600 would have no fiscal impact on DENR. According to the Department, condemnation is a local government activity and should result in no cost to the State. Moreover, DENR maintains that it will not impact state-owned conservation easements since local governments cannot condemn state owned property.

##### Administrative Office of the Courts

AOC reports that it appears that the proposed bill only applies to public condemners. Thus, it will not apply to utility companies or other private entities with the right to condemn property. It also appears that the act does not apply if DOT, as the public condemner, sets forth in its complaint the other options it considered and that a review was done in accordance with federal or state standards.

In those instances where it does apply, the act will require a judge to determine whether there was “any prudent and feasible” alternative to condemnation of the property subject to the conservation easement. The act does not define “prudent and feasible,” and neither the court nor the parties will

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<sup>1</sup> Taken from Bill Summary developed by the Research Division

have guidance on the types of evidence required. For example, it may be enough to show that another route was possible, but more expensive. Conversely, the condemning authority may be required to show no other route is possible. Adding a determination of this sort will require additional superior court hearings and likely extensive expert testimony. This will increase the time, and therefore the cost, of each case.

In FY 2007-08, AOC data indicate that there were 573 cases with a condemnation issue. *AOC cannot determine the number of cases involving a public condemner and in which a conservation easement holder contested the action*, and thus cannot determine any potential fiscal impact that may result from the passage of this bill.

For example, the cost of one day in civil Superior Court for in-court personnel alone is \$1,481. This estimate does not include jury costs, support staff not present in the courtroom, operating expenses for court and AOC personnel, such as computers, equipment, supplies, and training.

**SOURCES OF DATA:**

Department of Environment and Natural Resources  
Administrative Office of the Court

**TECHNICAL CONSIDERATIONS:** 1) The bill does not define “prudent and feasible.”

**FISCAL RESEARCH DIVISION: (919) 733-4910**

**PREPARED BY:** Lanier McRee, Danielle Seale

**APPROVED BY:** Marilyn Chism, Director  
Fiscal Research Division

**DATE:** July 9, 2009



**Signed Copy Located in the NCGA Principal Clerk's Offices**