

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 787

Short Title: DOT ROWs & Easements/Revise Law. (Public)

Sponsors: Representative B. Jones.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Transportation, if favorable, Judiciary 1, if favorable, Rules, Calendar, and Operations of the House

April 19, 2023

A BILL TO BE ENTITLED

AN ACT TO CODIFY THE LIMITS OF EXISTING RIGHTS-OF-WAY AND EASEMENTS MAINTAINED BY THE DEPARTMENT OF TRANSPORTATION TO PROVIDE CLARITY AND CONSISTENCY FOR PERSONS IMPACTED BY PREVIOUS PROPERTY TRANSACTIONS THAT WERE NOT DOCUMENTED OR RECORDED IN ACCORDANCE WITH CURRENT REQUIREMENTS.

Whereas, government oversight of road construction began in 1715, and the North Carolina Department of Transportation – previously known as the State Highway Commission – began constructing public roads in 1915; and

Whereas, during the past century as part of planning and constructing roads, the Department has procured land for rights-of-way and easements for construction and maintenance; and

Whereas, the procurement of the real property underlying and surrounding existing Department roadways has not been consistently surveyed, documented, deeded, or recorded in accordance with current standards; and

Whereas, over the past century, the Department has not updated, re-platted, or clarified land records relating to historic property transactions associated with roadway construction, but have instead relied on historic interpretations and prescriptive rights as guidance; and

Whereas, real property underlying and surrounding some existing Department roadways has been recorded in a manner consistent with current requirements, while other real property underlying and surrounding existing Department roadways continues to be deeded to private landowners despite past compensation or consideration; and

Whereas, private landowners which have existing recorded land underlying existing roadways have no maintenance obligations for the existing public roadways, and would unwillingly accept liability due to third-party occurrences which may occur on the roadway within the limits of their recorded property; Now, therefore,
The General Assembly of North Carolina enacts:

SECTION 1. Article 2A of Chapter 136 of the General Statutes is amended by adding a new section to read:

§ 136-44.18. Define boundaries of certain rights-of-way and easements.

(a) Right-of-Way Boundaries. – Notwithstanding any provision of law to the contrary, for any roadway for which the Department has responsibility for maintenance, but there is no instrument of conveyance describing the boundaries of the right-of-way, the boundary of the



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1 right-of-way shall be defined according to the typical maintenance limits that are Department
2 practice.

3 (b) Easement Boundaries. – Notwithstanding any provision of law to the contrary, for
4 any roadway for which the Department has responsibility for maintenance, but there is no
5 instrument of conveyance describing the boundaries of the easement, the boundary of the
6 easement shall be defined according to the typical maintenance limits that are Department
7 practice.

8 (c) Conditions Imposed on Developers. – If the Department, as a condition of granting a
9 permit, requires a developer to construct offsite improvements, and by constructing offsite
10 improvements there is a need for the developer to acquire a right-of-way or easement and the
11 developer is unable to do so, the Department shall coordinate with the developer to either revise
12 the development or development access or revise the requirements for offsite improvements such
13 that no additional right-of-way or easement is needed. The Department shall comply with the
14 requirement set forth in this subsection within a reasonable amount of time after the developer
15 provides evidence to the Department that the developer made a good-faith effort to acquire the
16 required right-of-way or easement. For purposes of this subsection, the term "good faith effort"
17 includes providing a copy of a certified letter to all affected property owners and all responses
18 received from those property owners.

19 (d) Construction. – Nothing in this section shall be construed as allowing (i) the
20 Department to require a Hold Harmless declaration from a developer or (ii) the Department to
21 take any action that would constitute a taking of property in violation of the Constitution of this
22 State or of the United States."

23 **SECTION 2.** By October 1, 2023, the Department of Transportation shall submit a
24 report to the Joint Legislative Transportation Oversight Committee (i) describing the
25 maintenance limits used by the Department in G.S. 136-44.18, as enacted by Section 1 of this
26 act, and (ii) recommending any additional legislative changes that may further aid in defining the
27 limits of rights-of-way and easements subject to G.S. 136-44.18.

28 **SECTION 3.** The Department of Transportation shall adopt rules, or amend their
29 rules, consistent with the provisions of this act. The Department may use the procedure set forth
30 in G.S. 150B-21.1 to adopt or amend any rules as required under this section.

31 **SECTION 4.** This act becomes effective July 1, 2023.