

March 12, 2009

S 600. CONDEMNATION OF CONSERVATION EASEMENTS. Filed 3/12/09. *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.*

Adds new Article 6 to GS Chapter 40A, entitled *Condemnation of Property Encumbered by a Conservation Easement*. Allows a public entity to condemn property encumbered by a conservation easement only if the entity demonstrates in writing that no prudent or feasible alternative to condemnation exists. Requires a superior court judge to hear and determine whether a prudent and feasible alternative exists. If the judge concludes that such an alternative exists, authorizes the judge to award attorneys' fees and costs including reasonable surveying, engineering, and appraisal costs, to the easement holder.

For approved condemnations, recognizes three separate types of compensation: (1) to the property owner, fair market value of the property as encumbered; (2) to the easement holder, fair market value of the easement; and (3) to the easement holder, an additional 25% of the value of the easement in order to reimburse costs incurred in locating and acquiring a substantially similar easement or otherwise using the proceeds in a manner consistent with the purposes of the easements. Effective for condemnation proceedings initiated on or after July 1, 2009.

Intro. by Clodfelter.

GS 40A

May 5, 2009

S 600. CONDEMNATION OF CONSERVATION EASEMENTS. Filed 3/12/09. Senate committee substitute makes the following changes to 1st edition. Amends the title and the text of the bill to remove language requiring a condemnor to pay holders of conservation easements an additional amount equal to 25% of the value of the easement in order to reimburse costs incurred in locating and acquiring a similar easement or otherwise using the proceeds in a manner consistent with the purposes of the conservation easement. Amends GS 40A-80 to clarify that a public condemnor, for the purposes of this new Article, is any entity exercising the power of eminent domain under any authority except the authority afforded to private entities under GS 40A-3(a) (e.g., railroad companies, utilities). Rewrites GS 40A-81 but reflects the same general requirement that in a condemnation proceeding, a public condemnor interested in condemning property encumbered by a conservation easement must demonstrate that there is no prudent and feasible alternative to condemnation of that specific property. Previous version would have directed a court to evaluate a condemnation petition and determine whether an alternative exists. Amended GS 40A-83 modifies this approach to require a judicial determination only in cases where the conservation holder contests the condemnation action. Provides that in such a challenge, a jury would be asked to decide whether a prudent or feasible alternative exists to condemnation of the property. Rewrites GS 40A-83 to eliminate the requirement that if the judge concludes that an alternative exists, the easement holder is entitled to attorneys' fees and costs. New language in GS 40A-83 defines when the condemnor can claim title and the right to immediate possession. Amends GS 40A-84 to provide that a jury, rather than a judge, will determine the fair market value of the easement when evaluating the amount of compensation due to property owners and easement holders.

June 4, 2009

S 600. CONDEMNATION OF CONSERVATION EASEMENTS. Filed 3/12/09. House committee substitute makes the following changes to 2nd edition.

Defines *conservation easement* to mean "conservation agreement" and "preservation agreement" as those terms are defined in GS 121-35. Directs a public entity seeking to exercise the power of eminent domain on property encumbered by a conservation easement to initiate the action by filing a complaint (was, complaint or declaration of taking) as required by GS Chapter 40 or GS Chapter 136 as applicable. Requires the complaint to include a statement that *alleges* that there is no prudent and feasible alternative to the condemnation of the property with the conservation easement (was, requires the complaint to include a statement that describes in

detail and information sufficient to demonstrate that there is no prudent and feasible alternative to the condemnation of the property with the conservation easement).

Provides that the holder of a conservation easement, who does not assert that the condemnor failed to sufficiently consider alternatives to the condemnation or to consider that there is a prudent and feasible alternative to the action has 120 days from the date the complaint is served to file an answer to the complaint. Deletes provisions that specify the content of the holder of the conservation easement's answer.

Provides that if the conservation easement holder contests the condemnation action, the judge (was, jury) will hear evidence and decide whether a prudent or feasible alternative exists to condemnation of the property. Places the burden of persuasion on the issue of the existence of a prudent or feasible alternative on the condemnor, providing that the holder of the conservation easement has identified, after discovery, at least one alternative. Provides that if the judge (was, jury) finds that a prudent and reasonable alternative exists, then the court is to dismiss the action and award costs and expenses to the holder of the conservation easement.

Adds the North Carolina Turnpike Authority as an entity to which certain criteria may exempt it from a determination as to whether a prudent or feasible alternative exists to condemnation of the property.

Amends the provisions regarding compensation for the condemnation of a property encumbered by a conservation easement to provide that the court is to determine just compensation pursuant to GS Chapter 40A, Article 4, as though there is no conservation easement on the property (was, the conservation easement was to be treated as a separately compensable property interest). Provides that any party may demand a trial by jury on the issue of the total just compensation for the taking. Makes conforming changes. Deletes provision providing for a right of appeal.

Makes technical and conforming changes. Changes the effective date to October 1, 2009 (was, July 1, 2009). Applies to condemnation proceedings initiated on or after that date.

July 6, 2009

S 600. CONDEMNATION OF CONSERVATION EASEMENTS. Filed 3/12/09. House committee substitute makes the following changes to 3rd edition. (1) Adds a provision setting out the following as circumstances to which the bill's provisions do not apply: (a) the conservation easement itself provides an express exception for uses, purposes, and rights that may be subject to condemnation in the future or circumstances in which the condemnation action to be taken would not extinguish, restrict, or impair the property rights of the holder of the easement; or (b) the condemnor is constructing, enlarging, or improving electrical distribution systems, gas systems, water systems, wastewater systems, storm drainage systems, or trails associated with greenways. In those cases, the condemnor must take reasonable steps to return the property to its condition prior to the condemnation. (2) Redefines *conservation easement* for meeting the bill's provision, specifying a federal statute and requiring that the conservation easement must be a qualified interest in real property, held by a qualified organization exclusively for conservation purposes. (3) New GS 40A-82 provides that where a holder of an easement challenges the condemnation but the court upholds it, the condemnation may go forward under Article 3 (Condemnation by Public Condemnors) of GS Chapter 40A. Committee substitute adds a provision that the condemnation may go forward, as applicable, under Article 9 (Condemnation) of GS Chapter 136. (4) New GS 40A-82 provides that a court determination as to whether a prudent or feasible alternative exists is not required when the condemnor is the Department of Transportation or the NC Turnpike Authority and certain other criteria are met. Committee substitute adds as a criterion the requirement that the condemnor set out in the complaint filed in the court the alternatives and mitigation measures considered with regard to the condemnation of the property. (5) New GS 40A-84 requires that the court determine just compensation to the holder of the easement. Committee substitute specifies that that compensation is to be set through a determination of the value of the property taken as a whole, unencumbered by the conservation easement, as well as any other separately owned interest in the property. Allocation of the just compensation among owners of the property and holders of the conservation easement is to be based on evidence including the opinion of a real estate valuation

expert with experience in the valuation of conservation easements. Enacts new GS 40A-85 providing a right of appeal according to GS 40A-13.

August 18, 2009

SL 2009-439 (S 600). CONDEMNATION OF CONSERVATION EASEMENTS. *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.* Summarized in *Daily Bulletin* 3/12/09, 5/5/09, 6/4/09, and 7/6/09. Enacted August 7, 2009. Effective October 1, 2009.