

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S

D

SENATE BILL 600
PROPOSED COMMITTEE SUBSTITUTE S600-PCS55356-RIx-10

Short Title: Condemnation of Conservation Easements. (Public)

Sponsors:

Referred to:

March 16, 2009

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.

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

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

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

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

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

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

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

23 The General Assembly of North Carolina enacts:

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

26 "Article 6.

27 "Condemnation of Property Encumbered by a Conservation Easement.

28 **"§ 40A-80. Applicability of Article.**

29 The provisions of this Article shall only apply to a condemnation action initiated by a
30 public condemnor, which for purposes of this Article shall be any entity exercising the power
31 of eminent domain under any authority except G.S. 40A-3(a).

32 **"§ 40A-81. Additional information required in petition or complaint filed.**

33 Any public entity that acts to exercise the power of eminent domain on property
34 encumbered by a conservation easement shall initiate the action as required by Chapter 40 of



* S 6 0 0 - P C S 5 5 3 5 6 - R I X - 1 0 *

1 the General Statutes or Chapter 136 of the General Statutes as applicable. The complaint or
2 declaration of taking filed as required by those Chapters shall also include a statement that
3 describes in detail and with information sufficient to demonstrate that there is no prudent and
4 feasible alternative to condemnation of the property encumbered by the conservation easement.

5 **"§ 40A-82. Demonstration of no prudent and feasible alternative required in certain**
6 **actions; judicial determination.**

7 (a) If a holder of a conservation easement contests an action to condemn property
8 encumbered by a conservation easement on the basis that the condemnor failed to sufficiently
9 consider alternatives to the action or that a prudent and feasible alternative exists to the action,
10 the holder of the conservation easement may file an answer to the complaint within 30 days
11 from the date of service thereof. The answer shall contain the following:

12 (1) Such admissions or denials of the allegations of the complaint as are
13 appropriate;

14 (2) The names and addresses of the persons filing the answer, together with a
15 statement as to their interest in the property subject to the condemnation
16 action; and

17 (3) Such affirmative defenses or matters as are pertinent to the action.

18 (b) If the holder of a conservation easement contests an action pursuant to subsection
19 (a) of this section, a jury shall hear and determine whether or not a prudent and feasible
20 alternative exists to condemnation of the property. If a jury determines that a prudent and
21 feasible alternative does exist to condemnation of the property, the court shall dismiss the
22 action and award the holder of the conservation easement costs, disbursements, and expenses in
23 accordance with G.S. 40A-8(b).

24 (c) A jury determination as to whether a prudent or feasible alternative exists to
25 condemnation of the property as set forth in subsection (b) of this section shall not be required
26 for actions: (i) in which the Department of Transportation is the condemnor; (ii) prior to filing
27 the condemnation action, a review of the action was conducted that considered the alternatives
28 to the condemnation of the property encumbered by the conservation easement and mitigation
29 measures to minimize the impact; and (iii) such review was conducted pursuant to:

30 (1) The State Environmental Policy Act (SEPA), G.S. 113A-1, et seq.;

31 (2) The National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, et seq.;
32 or

33 (3) 49 U.S.C. § 303(f).

34 **"§ 40A-83. Vesting of title and right of possession.**

35 Notwithstanding the provisions of G.S. 40A-42, title and right to immediate possession of
36 property subject to this Article shall not vest in a condemnor except upon:

37 (1) The failure of the easement holder to file an answer within the 30-day time
38 period established by G.S. 40A-82(a);

39 (2) Determination by a jury that no prudent or feasible alternative exists to
40 condemnation of the property pursuant to G.S. 40A-82(b); or

41 (3) Filing of the complaint and the declaration of taking and deposit in actions
42 meeting all of the requirements of G.S. 40A-82(c).

43 **"§ 40A-84. Compensation for condemnation.**

44 (a) In any action to condemn property encumbered by a conservation easement, the
45 conservation easement shall be treated as a separately compensable property interest. The
46 owner of the property encumbered by the easement shall be compensated for the fair market
47 value of the property as encumbered by the conservation easement; the holder of the
48 conservation easement shall be compensated for the fair market value of the easement. A jury
49 shall hear and determine the issue of fair market value based upon evidence to include at least
50 one appraisal performed by an appraiser with experience in valuation of conservation

1 easements. The court may assess costs, and the parties shall have a right of appeal as provided
2 in G.S. 40A-13.

3 (b) In condemnation actions in which the condemnor seeks less than fee simple interest
4 in the entire property, including condemnations for rights-of-way, or seeks to condemn less
5 than the entire property, a jury shall determine to what extent, if any, the partial taking of the
6 property will impair the conservation value of the conservation easement for purposes of
7 determining appropriate compensation to the holder of the easement."

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