

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

H.B. 787
Apr 18, 2023
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH10376-ML-118

Short Title: DOT ROWs & Easements/Revise Law.

(Public)

Sponsors: Representative B. Jones.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CODIFY THE LIMITS OF EXISTING RIGHTS-OF-WAY AND EASEMENTS
3 MAINTAINED BY THE DEPARTMENT OF TRANSPORTATION TO PROVIDE
4 CLARITY AND CONSISTENCY FOR PERSONS IMPACTED BY PREVIOUS
5 PROPERTY TRANSACTIONS THAT WERE NOT DOCUMENTED OR RECORDED IN
6 ACCORDANCE WITH CURRENT REQUIREMENTS.

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

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

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

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

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

24 Whereas, private landowners which have existing recorded land underlying existing
25 roadways have no maintenance obligations for the existing public roadways, and would
26 unwillingly accept liability due to third-party occurrences which may occur on the roadway
27 within the limits of their recorded property; Now, therefore,

28 The General Assembly of North Carolina enacts:

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

31 "**§ 136-44.18. Define boundaries of certain rights-of-way and easements.**

32 (a) Right-of-Way Boundaries. – Notwithstanding any provision of law to the contrary,
33 for any roadway for which the Department has responsibility for maintenance, but there is no
34 instrument of conveyance describing the boundaries of the right-of-way, the boundary of the
35 right-of-way shall be defined according to the typical maintenance limits that are Department
36 practice.



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

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

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

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

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

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