

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 545

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Senate Judiciary II/Election Laws Committee Substitute Adopted 7/19/95

Short Title: Cartway Amendment.

(Public)

Sponsors:

Referred to:

March 27, 1995

A BILL TO BE ENTITLED

AN ACT TO BROADEN THE LAW PROVIDING FOR THE ESTABLISHMENT OF  
CARTWAYS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-69 reads as rewritten:

**"§ 136-69. Cartways, tramways, etc., laid out; procedure.**

~~If~~In order to ensure that all landowners who do not have a deeded or documented easement or right-of-way to a public road shall have a legal means of obtaining access to that road, if any person, firm, association, or corporation shall be engaged in the cultivation of any land or the cutting and removing of any standing timber, or the working of any quarries, mines, or minerals, or the operating of any industrial or manufacturing plants, or public or private cemetery, one single-family homestead per seven acres of land, or taking action preparatory to the operation of any such enterprises, to which there is leading no public road, reasonable deeded or documented easement or right-of-way to a public road, or other adequate means of transportation, other than a navigable waterway, affording necessary and proper means of ingress thereto and egress therefrom, such person, firm, association, or corporation may institute a special proceeding as set out in the preceding section (G.S. 136-68), and if it shall G.S. 136-68.

1 Should it be made to appear to the court necessary, reasonable and just that such person  
2 shall have a private way to a public road or watercourse or railroad over the lands of  
3 other persons, the court shall appoint a jury of view of three disinterested freeholders to  
4 view the premises and lay off a cartway, tramway, or railway of not less-more than 18  
5 feet in width, of travel surface or such other minimum width requested in the petition and  
6 found necessary and proper by the court, and not more than 30 feet in width for cuts, fills,  
7 and ditches or cableways, chutes, and flumes, and flumes. Where there exists a private  
8 railroad crossing, that private railroad crossing may be used as part of a cartway  
9 established under this Article provided the person, firm, association, or corporation  
10 seeking the cartway agrees to share proportionately with other landowners authorized to  
11 use the crossing the cost of maintaining the private crossing and to protect and hold  
12 harmless the railroad against all liability associated with the crossing, provided the  
13 railroad is being operated in a lawful manner at or in the vicinity of the crossing. Except  
14 as herein provided for the establishment of a cartway over an existing private railroad  
15 crossing, no real estate, right-of-way, easement, leasehold, or other interest in land which  
16 has been condemned by a railroad, or has been obtained for a railroad's use as a right-of-  
17 way, depot, or station house shall be used for the establishment of a cartway or other use  
18 under this Article except by agreement with the railroad. Should a petitioner seeking a  
19 cartway request a new railroad crossing, the railroad shall negotiate in good faith the  
20 location of the new crossing at the requested location or some other mutually agreeable  
21 location. The jury of view shall assess the damages the owner or owners of the land  
22 crossed may sustain thereby, and make report of their findings in writing to the clerk of  
23 the superior court. Exceptions to said report may be filed by any interested party and  
24 such exceptions shall be heard and determined by the clerk of the superior court. The  
25 clerk of the superior court may affirm or modify said report, or set the same aside and  
26 order a new jury of view. All damages assessed by a judgment of the clerk, together with  
27 the cost of the proceeding, shall be paid into the clerk's office before the petitioners shall  
28 acquire any rights under said proceeding.

29 Where a tract of land lies partly in one county and partly in an adjoining county, or  
30 where a tract of land lies wholly within one county and the public road nearest or from  
31 which the most practical roadway to said land would run, lies in an adjoining county and  
32 the practical way for a cartway to said land would lead over lands in an adjoining county,  
33 then and in that event the proceeding for the laying out and establishing of a cartway may  
34 be commenced in either the county in which the land is located or the adjoining county  
35 through which said cartway would extend to the public road, and upon the filing of such  
36 petition in either county the clerk of the court shall have jurisdiction to proceed for the  
37 appointment of a jury from the county in which the petition is filed and proceed for the  
38 laying out and establishing of a cartway as if the tract of land to be reached by the  
39 cartway and the entire length of the cartway are all located within the bounds of said  
40 county in which the petition may be filed. A permissive use of a right-of-way or  
41 easement across the land of another shall not be a bar to the establishment of a cartway  
42 under this Article. In determining the path of a cartway, tramway, or railway the jury of  
43 view shall consider the location of previously used easements."

1           Sec. 2. G.S. 136-70 reads as rewritten:

2 **"§ 136-70. Alteration or abandonment of cartways, etc., in same manner.**

3           Cartways or other ways established under this Article or heretofore established, may  
4 be altered, changed, or abandoned in like manner as herein provided for their  
5 establishment upon petition instituted by any interested party: ~~Provided, that all cartways,~~  
6 ~~tramways, or railways established for the removal of timber shall automatically terminate at the~~  
7 ~~end of a period of five years, unless a greater time is set forth in the petition and the judgment~~  
8 ~~establishing the same.~~ party. A cartway established under this Article shall not terminate  
9 until the time specified in the petition and as found necessary and proper by the court."

10           Sec. 3. This act is effective upon ratification and applies to actions to establish  
11 cartways filed on or after that date.