

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 1038
Finance Committee Substitute Adopted 4/25/01
House Committee Substitute Favorable 11/28/01
Fourth Edition Engrossed 12/3/01

Short Title: Public Right-of-Way Declaration.

(Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE LANDOWNERS TO INITIATE A SPECIAL PROCEEDING TO CLARIFY THE EXISTENCE OF A RIGHT-OF-WAY OPEN TO THE PUBLIC ADJACENT TO THEIR PROPERTY WHEN THE PUBLIC RECORDS ARE UNCLEAR CONCERNING THE ACTUAL EXISTENCE OF THE RIGHT-OF-WAY AND TO REQUIRE THE DEPARTMENT OF TRANSPORTATION TO CONDEMN LAND FOR SECONDARY ROAD PAVING OR MAINTENANCE PROJECTS WHEN SEVENTY-FIVE PERCENT OF THE ADJACENT LANDOWNERS AGREE TO PROVIDE NECESSARY RIGHT-OF-WAY FOR THE PROJECT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-96.1. Special proceeding to declare a right-of-way dedicated to public use.

(a) A special proceeding under Article 3, Chapter 1 of the General Statutes may be brought to declare a right-of-way dedicated to public use if:

- (1) The landowners of tracts constituting two-thirds of the road frontage of the land abutting the right-of-way in question join in the action;
- (2) The right-of-way is depicted on an unrecorded map, plat, or survey;
- (3) The right-of-way has been actually open and used by the public; and
- (4) Recorded deeds for at least three separate parcels abutting the right-of-way recite the existence of the right-of-way as a named street or road.

(b) In a special proceeding brought pursuant to this section, the clerk of court shall issue an order declaring the right-of-way to be dedicated to public use upon finding that the provisions of subsection (a) of this section have been proven.

1 (c) Any right-of-way found to be dedicated to public use pursuant to this section
2 that is proposed for addition to the State highway system shall meet the requirements of
3 G.S. 136-102.6.

4 (d) This section shall not apply to any right-of-way established by adverse
5 possession or by cartway proceeding."

6 **SECTION 2.** G.S. 136-44.7 is amended by adding a new subsection to read:

7 "(c) When it is necessary for the Department of Transportation to acquire a right-
8 of-way in accordance with (a) and (b) of this section in order to pave a secondary road
9 or undertake a maintenance project, the Department shall negotiate the acquisition of
10 the right-of-way for a period of up to six months. At the end of that period, if one or
11 more property owners have not dedicated the necessary right-of-way and at least
12 seventy-five percent (75%) of the property owners adjacent to the project and the
13 owners of seventy-five percent (75%) of the road frontage adjacent to the project have
14 dedicated the necessary property for the right-of-way and have provided funds required
15 by Department rule to the Department to cover the costs of condemning the remaining
16 property, the Department shall initiate condemnation proceedings pursuant to Article 9
17 of this Chapter to acquire the remaining property necessary for the project."

18 **SECTION 3.** This act is effective when it becomes law.