

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1182
Committee Substitute Favorable 5/11/09

Short Title: Relocation of Easements.

(Public)

Sponsors:

Referred to:

April 8, 2009

1 A BILL TO BE ENTITLED
2 AN ACT AUTHORIZING CLERKS OF THE SUPERIOR COURTS OF THIS STATE TO
3 DETERMINE WHETHER AN EASEMENT SHOULD BE RELOCATED IN A SPECIAL
4 PROCEEDING.

5 The General Assembly of North Carolina enacts:

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

8 "Article 4B.

9 "Relocation of Easements.

10 "**§ 136-71.17. Special proceeding for relocation of easements; petition; appeal.**

11 (a) The relocation of an easement shall be determined by a special proceeding instituted
12 before the clerk of the superior court in the county where the property affected is situated. The
13 special proceeding shall be commenced by the owner of the servient estate filing a petition with
14 the clerk and serving a copy thereof on the owner of the dominant estate. A guardian ad litem
15 shall be appointed for any person under a disability.

16 (b) The clerk shall issue an order authorizing the relocation of the easement only if
17 there is a finding that the relocation can be accomplished without: (i) material and substantial
18 inconvenience; (ii) material and substantial reduction in value; or (iii) substantial expense to
19 connect the relocated easement to any existing improvements situated on the dominant estate
20 that are necessary for the continued use of the easement by the owner of the dominant estate.
21 The owner of the servient estate shall record in the office of the county register of deeds a copy
22 of the clerk's order authorizing the relocation of the easement along with a plat showing the
23 relocated easement. The order and plat shall be indexed under the names of the owner of the
24 servient estate and the owner of the dominant estate.

25 (c) The owner of the servient estate shall bear the cost of relocating the easement. The
26 costs in the special proceeding, including the fee and other cost of a survey as provided in
27 G.S. 1-408.1, shall be taxed against the owner of the servient estate. However, if the clerk
28 makes a finding that the owner of the dominant estate has unreasonably refused to consent to
29 the relocation of the easement, all or a portion of the costs in the special proceeding may be
30 taxed against the owner of the dominant estate.

31 (d) From any final order or judgment in the special proceeding, any interested party
32 may appeal to the superior court for a jury trial de novo on the issue of the relocation of the
33 easement.

34 (e) This Article does not apply to public utilities as defined in G.S. 62-3(23)a.1."

35 SECTION 2. This act is effective when it becomes law.

