

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 2227
Committee Substitute Favorable 6/19/90
Transportation Senate Committee Substitute Adopted 7/11/90

Short Title: Utility R/W-Clarify Com. Auth.

(Public)

Sponsors:

Referred to:

May 31, 1990

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR ACQUISITION OF RIGHT-OF-WAY BY THE DEPARTMENT OF TRANSPORTATION FOR LOCATION AND RELOCATION OF UTILITY INFRASTRUCTURE AND TO CLARIFY THE REGULATORY AUTHORITY OF THE UTILITIES COMMISSION WITH REGARD TO NATURAL GAS.

Whereas, many citizens of the State are not served with utilities necessary for their health, safety and welfare, such as natural gas, water and sewerage; and

Whereas, the State owns or controls rights-of-way for roads, and will be acquiring significant additional rights-of-way in the future, and such rights-of-way can form natural and economical corridors for the location or relocation of essential utilities; and

Whereas, the power to acquire rights-of-way presently vested in the Department of Transportation is restricted to acquisition of the amount needed for road construction and maintenance, which in some cases is not adequate to accommodate utilities; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-18 reads as rewritten:

"§ 136-18. Powers of Department of Transportation.

The said Department of Transportation shall be vested with the following powers:

... .

1 (2) To take over and assume exclusive control for the benefit of the State
2 of any existing county or township roads, and to locate and acquire
3 rights-of-way for any new roads that may be necessary for a State
4 highway system, and subject to the provisions of G.S. 136-19.5(a) and
5 (b) also locate and acquire such additional rights-of-way as may be
6 necessary for the present or future relocation or initial location, above
7 or below ground, of telephone, telegraph, electric and other lines, as
8 well as gas, water, sewerage, oil and other pipelines, to be operated by
9 public utilities as defined in G.S. 62-3(23) and which are regulated
10 under Chapter 62 of the General Statutes, or by municipalities,
11 counties, any entity created by one or more political subdivisions for
12 the purpose of supplying any such utility services, electric membership
13 corporations, telephone membership corporations, or any combination
14 thereof, with full power to widen, relocate, change or alter the grade or
15 location thereof and to change or relocate any existing roads that the
16 Department of Transportation may now own or may acquire; to
17 acquire by gift, purchase, or otherwise, any road or highway, or tract
18 of land or other property whatsoever that may be necessary for a State
19 highway system and adjacent utility rights-of-way: Provided, all
20 changes or alterations authorized by this subdivision shall be subject to
21 the provisions of G.S. 136-54 to 136-63, to the extent that said sections
22 are applicable: Provided, that nothing in this Chapter shall be
23 construed to authorize or permit the Department of Transportation to
24 allow or pay anything to any county, township, city or town, or to any
25 board of commissioners or governing body thereof, for any existing
26 road or part of any road heretofore constructed by any such county,
27 township, city or town, unless a contract has already been entered into
28 with the Department of Transportation.

29

30 (10) To make proper and reasonable rules, regulations and ordinances for
31 the placing or erection of telephone, ~~telegraph or other poles,~~ telegraph,
32 electric and other lines, above or below ground, signboards, fences,
33 gas, water, sewerage, oil, or other pipelines, and other similar
34 obstructions that may, in the opinion of the Department of
35 Transportation, contribute to the hazard upon any of the said highways
36 or in any ~~wise-way~~ interfere with the same, and to make reasonable
37 rules and regulations for the proper control thereof. And whenever the
38 order of the said Department of Transportation shall require the
39 removal of, or changes in, the location of telephone, telegraph, electric
40 or other ~~poles, lines,~~ signboards, fences, gas, water, sewerage, oil, or
41 other pipelines, or other similar obstructions, the owners thereof shall
42 at their own expense, except as provided in G.S. 136-19.5(c), move or
43 change the same to conform to the order of said Department of

1 Transportation. Any violation of such rules and regulations or
2 noncompliance with such orders shall constitute a misdemeanor.

3 "

4 Sec. 2. G.S. 136-19 reads as rewritten:

5 **"§ 136-19. Acquirement of land and deposits of materials; condemnation**
6 **proceedings; federal parkways.**

7 The Department of Transportation is vested with the power to acquire either in the
8 nature of an appropriate easement or in fee simple such rights-of-way and title to such
9 land, gravel, gravel beds or bars, sand, sand beds or bars, rock, stone, boulders, quarries,
10 or quarry beds, lime or other earth or mineral deposits or formations, and such standing
11 timber as it may deem necessary and suitable for road construction, maintenance, and
12 repair, and the necessary approaches and ways through, and a sufficient amount of land
13 surrounding and adjacent thereto, as it may determine to enable it to properly prosecute
14 the work, either by purchase, donation, or condemnation, in the manner hereinafter set
15 out. If any parcel is acquired in fee simple as authorized by this section and the
16 Department of Transportation later determines that the parcel is not needed for highway
17 purposes, first consideration shall be given to any offer to repurchase made by the
18 owner from whom said parcel was acquired or the heirs or assigns of such owner. The
19 Department of Transportation is also vested with the power to acquire such additional
20 land alongside of the rights-of-way or roads as in its opinion may be necessary and
21 proper for the protection of the roads and roadways, and such additional area as may be
22 necessary as by it determined for approaches to and from such material and other
23 requisite area as may be desired by it for working purposes. The Department of
24 Transportation may, in its discretion, with the consent of the landowner, acquire in fee
25 simple an entire lot, block or tract of land, if by so doing, the interest of the public will
26 be best served, even though said entire lot, block or tract is not immediately needed for
27 right-of-way purposes.

28 Notwithstanding any other provisions of law or eminent domain powers of utility
29 companies, utility membership corporations, municipalities, counties, entities created by
30 political subdivisions, or any combination thereof, and in order to prevent undue delay
31 of highway projects because of utility conflicts, the Department of Transportation may
32 condemn or acquire property in fee or appropriate easements necessary to provide
33 highway rights-of-way for the relocation of utilities when required in the construction,
34 reconstruction, or rehabilitation of a State highway project. The Department of
35 Transportation shall also have the authority, subject to the provisions of G.S. 136-
36 19.5(a) and (b), to, in its discretion, acquire rights-of-way necessary for the present or
37 future placement of utilities as described in G.S. 136-18(2).

38 Whenever the Department of Transportation and the owner or owners of the lands,
39 materials, and timber required by the Department of Transportation to carry on the work
40 as herein provided for, are unable to agree as to the price thereof, the Department of
41 Transportation is hereby vested with the power to condemn the lands, materials, and
42 timber and in so doing the ways, means, methods, and procedure of Article 9 of this
43 Chapter shall be used by it exclusively.

1 The Department of Transportation shall have the same authority, under the same
2 provisions of law provided for construction of State highways, for acquirement of all
3 rights-of-way and easements necessary to comply with the rules and regulations of the
4 United States government for the construction of federal parkways and entrance roads to
5 federal parks in the State of North Carolina. The acquirement of a total of 125 acres per
6 mile of said parkways, including roadway and recreational, and scenic areas on either
7 side thereof, shall be deemed a reasonable area for said purpose. The right-of-way
8 acquired or appropriated may, at the option of the Department of Transportation, be a
9 fee-simple title. The said Department of Transportation is hereby authorized to convey
10 such title so acquired to the United States government, or its appropriate agency, free
11 and clear of all claims for compensation. All compensation contracted to be paid or
12 legally assessed shall be a valid claim against the Department of Transportation,
13 payable out of the State Highway Fund. Any conveyance to the United States
14 Department of Interior of land acquired as provided by this section shall contain a
15 provision whereby the State of North Carolina shall retain concurrent jurisdiction over
16 the areas conveyed. The Governor is further authorized to grant concurrent jurisdiction
17 to lands already conveyed to the United States Department of Interior for parkways and
18 entrances to parkways.

19 The action of the Department of Transportation heretofore taken in the acquirement
20 of areas for the Blue Ridge Parkway in accordance with the rules and regulations of the
21 United States government is hereby ratified and approved and declared to be a
22 reasonable exercise of the discretion vested in the said Department of Transportation in
23 furtherance of the public interest.

24 When areas have been tentatively designated by the United States government to be
25 included within a parkway, but the final survey necessary for the filing of maps as
26 provided in this section has not yet been made, no person shall cut or remove any timber
27 from said areas pending the filing of said maps after receiving notice from the
28 Department of Transportation that such area is under investigation; and any property
29 owner who suffers loss by reason of the restraint upon his right to use the said timber
30 pending such investigation shall be entitled to recover compensation from the
31 Department of Transportation for the temporary appropriation of his property, in the
32 event the same is not finally included within the appropriated area, and the provisions of
33 this section may be enforced under the same law now applicable for the adjustment of
34 compensation in the acquirement of rights-of-way on other property by the Department
35 of Transportation."

36 Sec. 3. Chapter 136 of the General Statutes is amended by adding the
37 following section:

38 "**§ 136-19.5. Utility right-of-way agreements.**

39 (a) Before the Department of Transportation acquires or proposes to acquire
40 additional rights-of-way for the purpose of accommodating the installation of utilities as
41 authorized by G.S. 136-18 and G.S. 136-19, there shall first be voluntary agreements
42 with the appropriate utilities regarding the acquisition and use of the particular right-of-
43 way and requiring the payment to the Department of Transportation for or recapture of
44 all of its costs associated with that acquisition, including the use of funds allocated to

1 such acquisition. Such agreements may take into account the fact that more than one
 2 utility can make use of the right-of-way. No such agreement shall constitute a sale of
 3 the right-of-way and all such rights-of-way shall remain under the control of the
 4 Department of Transportation.

5 (b) A prior agreement between the Department of Transportation and the affected
 6 utilities may be entered into but is not required when the acquisition of right-of-way is
 7 for the purpose of relocation of utilities due to construction, reconstruction, or
 8 rehabilitation of a State highway project. The Department of Transportation shall notify
 9 the affected utility whose facilities are being relocated and the affected utility may
 10 choose not to participate in the proposed plan for right-of-way acquisition. The decision
 11 not to participate in the proposed plan of right-of-way acquisition shall not affect any
 12 other rights the utility may have as a result of the relocation of its lines or pipelines.

13 (c) Whenever the Department of Transportation requires the relocation of
 14 utilities located in a right-of-way for which the utility owner contributed to the cost of
 15 acquisition, the Department of Transportation shall reimburse the utility owner for the
 16 cost of moving those utilities.

17 (d) Any additional right-of-way obtained pursuant to this section which is part of
 18 a railroad right-of-way shall be returned to the railroad or its successor in interest when
 19 the Department of Transportation and the affected utilities agree that the additional
 20 right-of-way is no longer useful for utility purposes and the Department of
 21 Transportation determines that it is no longer useful for highway purposes."

22 Sec. 4. G.S. 62-133(b) reads as rewritten:

23 "(b) In fixing such rates, the Commission shall:

24

25 (1a) Apply the rate of return established under subdivision (4) of this
 26 subsection to rights-of-way acquired through agreements with the
 27 Department of Transportation pursuant to G.S. 136-19.5(a) if
 28 acquisition is consistent with a definite plan to provide service within
 29 five years of the date of the agreement and if such right-of-way
 30 acquisition will result in benefits to the ratepayers. If a right-of-way is
 31 not used within a reasonable time after the expiration of the five-year
 32 period, it may be removed from the rate base by the Commission when
 33 rates for the public utility are next established under this section.

34

35 (5) Fix such rates to be charged by the public utility as will earn
 36 in addition to reasonable operating expenses ascertained pursuant to
 37 subdivision (3) of this subsection the rate of return fixed pursuant to
 38 subdivisions (4) and (4a) on the cost of the public utility's property
 39 ascertained pursuant to ~~subdivision (1)~~ subdivisions (1) and (1a) of
 40 this subsection.

41 ..."

42 Sec. 5. Chapter 62 of the General Statutes is amended by adding the
 43 following new section:

44 "**§ 62-36B. Regulation of natural gas service agreements.**

1 Whenever the Commission, after notice and hearing, finds that additional natural gas
2 service agreements (including 'backhaul' agreements) with interstate or intrastate
3 pipelines will provide increased competition in North Carolina's natural gas industry
4 and (i) will likely result in lower costs to consumers without substantially increasing the
5 risks of service interruptions to customers, or (ii) will substantially reduce the risks of
6 service interruptions without unduly increasing costs to consumers, the Commission
7 may enter and serve an order directing the franchised natural gas local distribution
8 company to negotiate in good faith to enter into such service agreements within a
9 reasonable time. In considering costs to consumers under this section, the Commission
10 may consider both short-term and long-term costs."

11 Sec. 6. This act is effective upon ratification.