

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 2227

Short Title: Utility Right-of-Way/DOT.

(Public)

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Sponsors: Representatives Holmes and Kerr (Cosponsor).

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Referred to: Infrastructure.

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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.

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:

... .

- (2) To take over and assume exclusive control for the benefit of the State of any existing county or township roads, and to locate and acquire rights-of-way for any new roads that may be necessary for a State highway system, and subject to the provisions of G.S. 136-19.5(a) and (b) also locate and acquire such additional rights-of-way as may be

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

23          ....

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

40          ...."

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

42          "**§ 136-19. Acquirement of land and deposits of materials; condemnation**  
 43          **proceedings; federal parkways.**

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

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

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

38 The Department of Transportation shall have the same authority, under the same  
39 provisions of law provided for construction of State highways, for acquirement of all  
40 rights-of-way and easements necessary to comply with the rules and regulations of the  
41 United States government for the construction of federal parkways and entrance roads to  
42 federal parks in the State of North Carolina. The acquirement of a total of 125 acres per  
43 mile of said parkways, including roadway and recreational, and scenic areas on either  
44 side thereof, shall be deemed a reasonable area for said purpose. The right-of-way

1 acquired or appropriated may, at the option of the Department of Transportation, be a  
2 fee-simple title. The said Department of Transportation is hereby authorized to convey  
3 such title so acquired to the United States government, or its appropriate agency, free  
4 and clear of all claims for compensation. All compensation contracted to be paid or  
5 legally assessed shall be a valid claim against the Department of Transportation,  
6 payable out of the State Highway Fund. Any conveyance to the United States  
7 Department of Interior of land acquired as provided by this section shall contain a  
8 provision whereby the State of North Carolina shall retain concurrent jurisdiction over  
9 the areas conveyed. The Governor is further authorized to grant concurrent jurisdiction  
10 to lands already conveyed to the United States Department of Interior for parkways and  
11 entrances to parkways.

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

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

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

31 "**§ 136-19.5. Utility right-of-way agreements.**

32 (a) Before the Department of Transportation acquires or proposes to acquire  
33 additional rights-of-way for the purpose of accommodating the installation of utilities as  
34 authorized by G.S. 136-18 and G.S. 136-19, there shall first be voluntary agreements  
35 with the appropriate utilities regarding the acquisition and use of the particular right-of-  
36 way and the payment to the Department of Transportation for or recapture of all or any  
37 of its costs associated with that acquisition, including the use of funds allocated to such  
38 acquisition. Such agreements may take into account the fact that more than one utility  
39 can make use of the right-of-way. No such agreement shall constitute a sale of the  
40 right-of-way and all such rights-of-way shall remain under the control of the  
41 Department of Transportation.

42 (b) A prior agreement between the Department of Transportation and the affected  
43 utilities may be entered into but is not required when the acquisition of right-of-way is  
44 for the purpose of relocation of utilities due to construction, reconstruction or

1 rehabilitation of a State highway project. The Department of Transportation shall notify  
2 the affected utility whose facilities are being relocated and the affected utility may  
3 choose not to participate in the proposed plan for right-of-way acquisition. The decision  
4 not to participate in the proposed plan of right-of-way acquisition shall not affect any  
5 other rights the utility may have as a result of the relocation of its lines or pipelines.

6 (c) Whenever the Department of Transportation requires the relocation of  
7 utilities located in a right-of-way for which the utility owner contributed to the cost of  
8 acquisition, the Department of Transportation shall reimburse the utility owner for the  
9 cost of moving those utilities."

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

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

12 ....

13 (1a) Apply the rate of return established under subdivision (4) of this  
14 subsection to rights-of-way acquired through agreements with the  
15 Department of Transportation pursuant to G.S. 136-19.5(a) if  
16 acquisition is consistent with a definite plan to provide service within  
17 five years of the date of the agreement and if such right-of-way  
18 acquisition will result in benefits to the ratepayers.

19 ....

20 (5) Fix such rates to be charged by the public utility as will earn  
21 in addition to reasonable operating expenses ascertained pursuant to  
22 subdivision (3) of this subsection the rate of return fixed pursuant to  
23 subdivisions (4) and (4a) on the cost of the public utility's property  
24 ascertained pursuant to ~~subdivision (1)~~. subdivisions (1) and (1a) of  
25 this subsection.

26 ..."

27 Sec. 5. This act is effective upon ratification.