

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 796
Second Edition Engrossed 5/6/93

Short Title: Durham County Road Closings.

(Local)

Sponsors: Representative G. Miller.

Referred to: Local and Regional Government I.

April 8, 1993

A BILL TO BE ENTITLED

AN ACT GRANTING TO DURHAM COUNTY REDUCTION OF THE NOTICE PERIOD FOR CLOSING ROADS AND EASEMENTS, CLARIFYING THE COUNTY'S AUTHORITY TO PERMIT THE CLOSING OF UNOPENED ROADS, THE DIVISION OF RIGHT-OF-WAY IN TYPICAL ROAD CLOSINGS, AND ESTABLISHING PROCEDURES FOR APPEALS OF ROAD CLOSINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-241 reads as rewritten:

"§ 153A-241. Closing public roads or easements.

A county may permanently close ~~any public any~~:

(1) Public road or any easement; or

(2) Unopened road that is shown on a plat but that has not been accepted or maintained by the county

within the county and not within a city, except public roads or easements for public roads under the control and supervision of the Department of Transportation. The board of commissioners shall first adopt a resolution declaring its intent to close the public road or easement and calling a public hearing on the question. The board shall cause the resolution to be published once a week for ~~four~~ two successive weeks before the hearing, a copy of the resolution to be sent by registered or certified mail to each owner as shown on the county tax records of property adjoining the public road or easement who did not join in the request to have the road or easement closed, and a notice of the closing and public hearing to be prominently posted in at least two places along the road or easement. A notice may be sent to such owners in lieu of a copy of the resolution. A

1 notice may be published in lieu of publication of the resolution. At the hearing the
2 board shall hear all interested persons who appear with respect to whether the closing
3 would be detrimental to the public interest or to any individual property rights. If, after
4 the hearing, the board of commissioners is satisfied that closing the public road or
5 easement is not contrary to the public interest and (in the case of a road) that no
6 individual owning property in the vicinity of the road or in the subdivision in which it is
7 located would thereby be deprived of reasonable means of ingress and egress to his
8 property, the board may adopt an order closing the road or easement. A certified copy of
9 the order (or judgment of the court) shall be filed in the office of the register of deeds of
10 the county.

11 Any person aggrieved by the closing of a public road or an easement may appeal the
12 board of commissioners' order to the appropriate division of the General Court of
13 Justice within 30 days after the day the order is adopted. The court shall hear the matter
14 **de novo** and has jurisdiction to try the issues arising and to order the road or easement
15 closed upon proper findings of fact by the trier of fact. All facts and issues shall be
16 heard and decided by a judge sitting without a jury. Notwithstanding this paragraph, in
17 addition to determining whether procedural requirements were complied with, the court
18 shall determine whether, on the record as presented to the county board of
19 commissioners, the board's decision to close the road or easement was in accordance
20 with the statutory standards of this section and any other applicable requirements of
21 local law or ordinance.

22 No cause of action founded upon the invalidity of a proceeding taken in closing a
23 public road or an easement may be asserted except in an action or proceeding begun
24 within 30 days after the day the order is adopted.

25 Upon the closing of a public road or an easement pursuant to this section, all right,
26 title, and interest in the right-of-way is vested in those persons owning lots or parcels of
27 land adjacent to the road or easement, and the title of each adjoining landowner, for the
28 width of his abutting land, extends to the center line of the public road or easement.
29 Notwithstanding the previous sentence, a different division of the right-of-way may be
30 provided with the assent of all property owners taking title to the closed road or
31 easement. Such assent shall be evidenced by a plat which shows the road or easement
32 closing and the portion of the closed road or easement to be taken by each owner. To be
33 effective, the plat must be signed by each person who, under this section, has an
34 ownership right in the closed road or easement. However, the right, title or interest
35 vested in an adjoining landowner by this paragraph remains subject to any public utility
36 use or facility located on, over, or under the road or easement immediately before its
37 closing, until the landowner or any successor thereto pays to the utility involved the
38 reasonable cost of removing and relocating the facility."

39 Sec. 2. This act applies to Durham County only.

40 Sec. 3. This act is effective upon ratification and applies to actions taken by
41 the County to close public roads or easements after July 1, 1993.