COMMITTEE REPORT

March 1, 2018

**H. 4889**

Introduced by Reps. Delleney and D.C. Moss

S. Printed 3/1/18--H.

Read the first time February 8, 2018.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 4889) to amend the Code of Laws of South Carolina, 1976, by adding Section 27‑8‑85 so as to allow for the holder of a conservation easement to contest, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking SECTION 1 and inserting:

/ SECTION 1. Chapter 8, Title 27 of the 1976 Code is amended by adding:

“Section 27‑8‑85. (A) Notwithstanding the provisions of Title 28, if the condemnation notice applies to land subject to a conservation easement and the condemnee rejects the amount tendered within the thirty day period, the condemnation action is stayed and the condemnor may not take possession of the property until a hearing is held in a circuit court of appropriate jurisdiction. The court shall hear and determine whether or not a prudent and feasible alternative exists to condemnation of the property. The burden is on the condemnor if the holder of the conservation easement or condemnee, after discovery, has identified at least one alternative. If the alternative is not adjudged prudent and feasible, the condemnation action may proceed. If the court determines that a prudent and feasible alternative does exist to condemnation of the property, the court shall dismiss the condemnation action and award the condemnee costs and litigation expenses as applicable. Attorney’s fees may not be awarded.

(B) A determination as to whether a prudent or feasible alternative exists is not required for actions where:

(1) the South Carolina Department of Transportation is the condemnor; and

(2) a review of the project for which the property is being condemned was conducted prior to the filing of the condemnation action and considered the alternatives to the condemnation of the property encumbered by the conservation easement and mitigation measures to minimize the impact. The condemnor shall, in the condemnation notice filed with the court, identify the alternatives and mitigation measures considered with regard to condemnation; or

(3) the review was conducted pursuant to the National Environmental Policy Act, 42 U.S.C. Sections 4321, et seq.

(C) If a condemnee notifies the condemnor in writing, after receiving the condemnation notice to enter upon the landowner’s property, that the property is subject to a conservation easement, then the condemnor shall consider prudent and feasible alternatives during his survey or appraisal of the property.” /

Renumber sections to conform.

Amend title to conform.

F. GREGORY DELLENEY, JR. for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 27‑8‑85 SO AS TO ALLOW FOR THE HOLDER OF A CONSERVATION EASEMENT TO CONTEST AN ACTION TO CONDEMN PROPERTY ENCUMBERED BY A CONSERVATION EASEMENT UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE THE PROCEDURE FOR A CONTESTED ACTION, AND TO PROVIDE EXCEPTIONS UNDER CERTAIN CIRCUMSTANCES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 8, Title 27 of the 1976 Code is amended by adding:

“Section 27‑8‑85. (A) If a holder of a conservation easement contests an action to condemn property encumbered by a conservation easement on the basis that the condemnor failed to sufficiently consider alternatives to the action or that a prudent and feasible alternative exists to the action, the holder of the conservation easement may file an answer to the complaint within thirty days from the date of service of the complaint. Notwithstanding the provisions of Chapter 2, Title 28, if the holder of the conservation easement does not assert that the condemnor failed to sufficiently consider alternatives to the action or that a prudent and feasible alternative exists to the action, the holder of the conservation easement may file an answer within one hundred and twenty days from the date of service of the complaint.

(B) If the holder of a conservation easement contests a condemnation action in a circuit court of appropriate jurisdiction, the judge shall hear and determine whether or not a prudent and feasible alternative exists to condemnation of the property. The burden is on the condemnor if the holder of the conservation easement, after discovery, has identified at least one alternative. If the alternative is not adjudged prudent and feasible, the condemnation action may proceed. If the judge determines that a prudent and feasible alternative does exist to condemnation of the property, the court shall dismiss the condemnation action and award the holder of the conservation easement costs and litigation expenses as applicable. Attorney’s fees may not be awarded.

(C) A determination as to whether a prudent or feasible alternative exists is not required for actions where:

(1) the South Carolina Department of Transportation is the condemnor;

(2) a review of the project for which the property is being condemned was conducted prior to the filing of the condemnation action and considered the alternatives to the condemnation of the property encumbered by the conservation easement and mitigation measures to minimize the impact. The condemnor shall, in the complaint filed with the court, identify the alternatives and mitigation measures considered with regard to condemnation; and

(3) the review was conducted pursuant to the National Environmental Policy Act, 42 U.S.C. Sections 4321, et seq.

(D) If a landowner notifies the condemnor in writing, after receiving the condemnor’s notice to enter upon the landowner’s property, that the property is subject to a conservation easement, then the condemnor shall consider prudent and feasible alternatives during his survey or appraisal of the property.”

SECTION 2. This act takes effect upon approval by the Governor.

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