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Indicates New Matter

COMMITTEE REPORT

April 21, 2010

**S. 1075**

Introduced by Senators Sheheen, Campsen, Lourie and Ford

S. Printed 4/21/10--S. [SEC 4/22/10 1:56 PM]

Read the first time January 21, 2010.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 1075) to amend Section 27‑8‑80 of the 1976 Code, relating to condemnation of conservation easements, to provide that there must be no prudent and feasible alternative to condemnation, 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 all after the enacting words and inserting therein the following:

/ SECTION 1. Section 27‑8‑80 of the 1976 Code is amended to read:

“Section 27‑8‑80. (A) A person or entity empowered to condemn may condemn a conservation easement for other public purposes pursuant to applicable provisions of the ~~1976~~ South Carolina Code of Laws or federal law. Holders of the conservation easement must be parties to the proceedings along with the owner of the land.

(B) Any person or entity who seeks to condemn a conservation easement must state in the condemnation notice required by Section 28‑2‑280 that condemnation of the conservation easement is:

(1) necessary for a public use as required by the South Carolina Constitution, Article I, Section 13, and Chapter 2 of Title 28 of the South Carolina Code of Laws; and

(2) in the best overall public interest as shown through a review undertaken by the condemnor that:

(a) takes into consideration the adverse impacts to the condemnation easement, and

(b) is substantially equivalent to the review required by the National Environmental Policy Act (NEPA) 42 U.S.C. Section 4321, et seq., 49 USC Section 303, and 23 CFR Section 771 for transportation projects that are federally funded.

(C) If within thirty days after receiving a condemnation notice, a holder of a conservation easement or the owner of the land rejects the amount tendered to condemn property encumbered by a conservation easement on the basis that the condemnation is not necessary for a public use or not in the overall public interest, then the holder of a conservation easement or owner of the land may file a challenge to the condemnor’s right to take the property pursuant to procedures provided by Section 28-2-470.

(D) The provisions of subsections (B) and (C) shall not apply to condemnation actions brought for transportation projects where:

(1) prior to the condemnation action, the condemnor conducted a review required by the National Environmental Policy Act (NEPA) 42 U.S.C. Section 4321, et seq., 49 USC Section 303, and 23 CFR Section 771; or

(2) the purpose of the transportation project is for:

(a) a public use; and

(b) routine maintenance, economic development projects, intersection improvements, safety improvements, or widening of existing public highways for purposes other than adding new through lanes.

(E) The provisions of subsections (B) and (C) shall not apply to condemnation actions in those circumstances in which a condemnor is exercising the power of eminent domain as provided in Titles 4, 5, 6, 48, 58, and Chapter 49 of Title 33 of the South Carolina Code of Laws and is constructing, enlarging, or improving electric distribution and transmission systems; telephone utility systems; gas production, storage, transmission, and distribution systems; water supply and distribution systems; wastewater collection, treatment and disposal systems of all types; storm sewer and drainage systems; or trails associated with greenways.

(F) The provisions of subsections (B) and (C) shall not apply unless the conservation easement:

(1) is held by an eligible trust fund recipient as defined in Chapter 59 of Title 48;

(2) is established in perpetuity;

(3) the conservation easement is recorded as provided in Section 27-8-30(A) prior to the project being approved by the condemnor; and

(4) within ninety days after the conservation easement was created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected, the Executive Director of the South Carolina Conservation Bank established pursuant to Chapter 59 of Title 48 has received written notice by certified mail of the conservation easement and delivery of a GISShape file, or equivalent geographic information technology, depicting the boundaries of the conservation easement. A holder of conservation easements in existence on the effective date of this subsection must provide written notice and a GISShape file, or equivalent geographic information technology, depicting the boundaries of the easement to the Executive Director of the South Carolina Conservation Bank within ninety days after the effective date of this subsection.”

SECTION 2. This act takes effect October 1, 2010, and shall apply to condemnation litigation filed on or after that date and only to projects approved by the condemnor after the effective date of this act. /

Renumber sections to conform.

Amend title to conform.

GERALD MALLOY for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

Minimal (Some additional costs expected but can be absorbed)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

See Below

**EXPLANATION OF IMPACT:**

SC Conservation Bank and the Department of Parks, Recreation & Tourism

The bank and department indicate they do not anticipate any impact on the state general fund (or on federal and/or other funds) associated with enactment of this bill.

Department of Natural Resources (DNR)

The department reports that if an easement property held by DNR were to be condemned, it would require staff time to conduct research and prepare necessary reports. Costs related to research and reporting will vary on a case-by-case basis. If a condemnation involved DNR property obtained with federal funds, federal funds could be used to offset some of the cost.

*Department of Transportation (SCDOT)*

*SCDOT indicates that in order to limit spending unnecessary project development time and resources on a route that may need to be changed if contested, SCDOT would need to conduct title searches very early in the project development process on ally property that might be needed for a project to determine whether the properties were subject to a conservation easement. SCDOT estimates that this could increase project development costs by 25%. Similar law in North Carolina exempts transportation projects that fall within the Federal NEPA process. Even if the bill is amended to provide a similar exemption, SCDOT estimates the fiscal impact to be approximately $5 million annually because many projects fall outside of the NEPA process. Without an exemption similar the North Carolina’s, the fiscal impact would be much greater.*

**SPECIAL NOTES:**

*The italicized portion of this impact indicates the items that have been revised. For this impact, the revised constitutes information that was not available in the original impact.*

*Approved By:*

Harry Bell

Office of State Budget

**A** **BILL**

TO AMEND SECTION 27‑8‑80 OF THE 1976 CODE, RELATING TO CONDEMNATION OF CONSERVATION EASEMENTS, TO PROVIDE THAT THERE MUST BE NO PRUDENT AND FEASIBLE ALTERNATIVE TO CONDEMNATION IN ORDER TO PROCEED WITH CONDEMNATION, AND TO PROVIDE FOR THE PROCESS TO DETERMINE WHETHER A PRUDENT AND FEASIBLE ALTERNATIVE EXISTS.

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

SECTION 1. Section 27‑8‑80 of the 1976 Code is amended to read:

“Section 27‑8‑80. (A) A person or entity empowered to condemn may condemn a conservation easement for other public purposes pursuant to applicable provisions of the 1976 Code or federal law. Holders of the conservation easement must be parties to the proceedings along with the owner of the land.

(B) Any person or entity who seeks to condemn a conservation easement must state in the condemnation notice required by Section 28‑2‑280 that there is no prudent and feasible alternative to condemnation of the property encumbered by the conservation easement.

(C) If within thirty days after receiving a condemnation notice, a holder of a conservation easement or the owner of the land rejects the amount tendered 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, then the condemnor may file the condemnation notice with the clerk of court pursuant to Section 28‑2‑230(A). The condemnor may not take possession of the property unless the court finds that no prudent or feasible alternative exists.

(D) If the holder of a conservation easement or the owner of the land contests condemnation pursuant to this section, the case shall proceed under the provisions of Section 28‑2‑240.

SECTION 2. This act takes effect upon approval by the Governor and shall apply to condemnation litigation filed on or after that date.

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