

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 127

Short Title: DOT Condemnation Changes. (Public)

Sponsors: Representatives Stam, Jackson, and Bryan (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary IV, if favorable, Appropriations.

March 3, 2015

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE MEASURE OF DAMAGES IN A CONDEMNATION ACTION INITIATED BY THE DEPARTMENT OF TRANSPORTATION, TO PROVIDE THAT INTEREST ON A DOT CONDEMNATION AWARD SHALL BE PAID FROM THE DATE OF TAKING UNTIL THE DATE THE JUDGMENT IS PAID; TO AUTHORIZE A DEFENDANT IN SUCH AN ACTION TO RECOVER ATTORNEYS' FEES AND COSTS IF THE JUDGMENT EXCEEDS THE DEPOSIT BY TWENTY-FIVE PERCENT OR MORE; TO REDUCE TO ONE HUNDRED EIGHTY DAYS ANY DELAY OF A BUILDING PERMIT ISSUANCE DUE TO THE TRANSPORTATION CORRIDOR OFFICIAL MAP ACT; TO PROVIDE THAT A PROPERTY OWNER IS ENTITLED TO COMPENSATION FOR PARTIAL CONTROL OF ACCESS; AND TO PROVIDE THAT THE DEPARTMENT OF TRANSPORTATION SHALL SEND ANY RELOCATION NOTICE REQUIRED BY FEDERAL LAW WITHIN A SPECIFIED PERIOD OF TIME.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-112 reads as rewritten:

"§ 136-112. **Measure of damages.**

The following shall be the measure of damages to be followed by the commissioners, jury or judge who determines the issue of ~~damages~~; damages shall be as provided in G.S. 40A-63 and G.S. 40A-64.

(1) ~~Where only a part of a tract is taken, the measure of damages for said taking shall be the difference between the fair market value of the entire tract immediately prior to said taking and the fair market value of the remainder immediately after said taking, with consideration being given to any special or general benefits resulting from the utilization of the part taken for highway purposes.~~

(2) ~~Where the entire tract is taken the measure of damages for said taking shall be the fair market value of the property at the time of taking."~~

SECTION 2. G.S. 136-113 reads as rewritten:

"§ 136-113. **Interest as a part of just compensation.**

To said amount awarded as damages by the commissioners or a jury or judge, the judge shall, as a part of just compensation, add interest at the legal rate as provided in G.S. 24-1 on said amount from the date of taking to the date of ~~judgment~~; the judgment is paid; but interest shall not be allowed from the date of deposit on so much thereof as shall have been paid into court as provided in this Article."

SECTION 3. G.S. 136-119 reads as rewritten:



1 **"§ 136-119. Costs and appeal.**

2 (a) The Department of Transportation shall pay all court costs taxed by the court. Either
3 party shall have a right of appeal to the Supreme Court for errors of law committed in any
4 proceedings provided for in this Article in the same manner as in any other civil actions and it
5 shall not be necessary that an appeal bond be posted.

6 (b) The court having jurisdiction of the condemnation action instituted by the
7 Department of Transportation to acquire real property by condemnation shall award the owner
8 of any right, or title to, or interest in, such real property such sum as will in the opinion of the
9 court reimburse such owner for his reasonable cost, disbursements, and expenses, including
10 reasonable attorney fees, appraisal, and engineering fees, actually incurred because of the
11 condemnation proceedings, ~~if (i) the~~ if any of the following apply:

12 (1) The final judgment is that the Department of Transportation cannot acquire
13 real property by condemnation; or (ii) the condemnation.

14 (2) The proceeding is abandoned by the Department of Transportation.

15 (3) The final judgment exceeds the amount of the initial deposit by twenty-five
16 percent (25%) or more. Attorneys' fees awarded pursuant to this subdivision
17 shall not exceed one-third of the difference between the judgment award,
18 plus interest, and the initial deposit.

19 (c) The judge rendering a judgment for the plaintiff in a proceeding brought under
20 G.S. 136-111 awarding compensation for the taking of property, shall determine and award or
21 allow to such plaintiff, as a part of such judgment, such sum as will in the opinion of the judge
22 reimburse such plaintiff for his reasonable cost, disbursements and expenses, including
23 reasonable attorney, appraisal, and engineering fees, actually incurred because of such
24 proceeding."

25 **SECTION 4.** G.S. 136-44.51(b) reads as rewritten:

26 "(b) In any event, no application for building permit issuance or subdivision plat
27 approval for a tract subject to a valid transportation corridor official map shall be delayed by
28 the provisions of this section for more than ~~three years~~ 180 days from the date of its original
29 submittal to the appropriate local jurisdiction. A submittal to the local jurisdiction for corridor
30 map determination shall require only the name of the property owner, the street address of the
31 property parcel, the parcel number or tax identification number, a vicinity map showing the
32 location of the parcel with respect to nearby roads and other landmarks, a sketch of the parcel
33 showing all existing and proposed structures or other uses of the property, and a description of
34 the proposed improvements. If the impact of an adopted corridor on a property submittal for
35 corridor map determination is still being reviewed after the ~~three-year~~ 180-day period
36 established pursuant to this subsection, the entity that adopted the transportation corridor
37 official map affecting the issuance of building permits or subdivision plat approval shall issue
38 approval for an otherwise eligible request or initiate acquisition proceedings on the affected
39 properties. If the entity that adopted the transportation corridor official map has not initiated
40 acquisition proceedings or issued approval within the time limit established pursuant to this
41 subsection, an applicant within the corridor may treat the real property as unencumbered and
42 free of any restriction on sale, transfer, or use established by this Article."

43 **SECTION 5.** G.S. 136-89.53 reads as rewritten:

44 **"§ 136-89.53. New and existing facilities; grade crossing eliminations.**

45 The Department of Transportation may designate and establish controlled-access highways
46 as new and additional facilities or may designate and establish an existing street or highway as
47 included within a controlled-access facility. When an existing street or highway shall be
48 designated as and included within a controlled-access facility the owners of land abutting such
49 existing street or highway shall be entitled to compensation for the taking of or injury to their
50 easements of ~~access~~ access, including compensation for partial control of access. The
51 Department of Transportation shall have authority to provide for the elimination of

1 intersections at grade of controlled-access facilities with existing State highways and county
2 roads, and city and town streets, by grade separation or frontage road, or by closing off such
3 roads and streets, or other public ways at the right-of-way boundary line of such
4 controlled-access facility; and after the establishment of any controlled-access facility, no
5 highway or street which is not part of said facility shall intersect the same at grade. No street or
6 [of] any city or town and no State highway, county road, or other public way shall be opened
7 into or connected with any such controlled-access facility without the consent and previous
8 approval of the Department of Transportation. Such consent and approval shall be given only if
9 the public interest shall be served thereby."

10 **SECTION 6.** G.S. 136-103(a) reads as rewritten:

11 "(a) In case condemnation shall become necessary the Department of Transportation
12 shall institute a civil action by filing in the superior court of any county in which the land is
13 located a complaint and a declaration of taking declaring that such land, easement, or interest
14 therein is thereby taken for the use of the Department of Transportation. The Department of
15 Transportation shall provide any written notice of relocation required by federal law no earlier
16 than five working days prior to instituting a filing under this subsection, and not later than one
17 working day prior to instituting a filing under this subsection."

18 **SECTION 7.** Sections 2 and 4 of this act become effective July 1, 2015, and apply
19 to condemnation actions filed on or after that date. Section 6 of this act becomes effective
20 October 1, 2015, and applies to condemnation actions filed on or after that date. The remainder
21 of this act becomes effective July 1, 2016, and applies to condemnation actions filed on or after
22 that date.