

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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1

HOUSE BILL 1017

Short Title: Condemnation Measure of Damages.

(Public)

Sponsors: Representative Gamble.

Referred to: Transportation.

April 19, 1993

1 A BILL TO BE ENTITLED  
2 AN ACT TO MODIFY THE PROVISIONS RELATING TO THE MEASURE OF  
3 DAMAGES IN CONDEMNATION ACTIONS.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 136-112 reads as rewritten:

6 "**§ 136-112. Measure of damages.**

7 The following shall be the measure of damages to be followed by the  
8 commissioners, jury or judge who determines the issue of damages:

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

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

17 (3) If in the taking of property it becomes necessary for certain  
18 improvements to be made to the remaining property by the property  
19 owner to allow ingress and egress to the remaining property for its  
20 proper enjoyment, the Department of Transportation shall pay to the  
21 property owner the reasonable costs of the improvements."

22 Sec. 2. G.S. 136-18 reads as rewritten:

23 "**§ 136-18. Powers of Department of Transportation.**

24 The said Department of Transportation shall be vested with the following powers:

- 1           (1)    The general supervision over all matters relating to the construction of  
2           the State highways, letting of contracts therefor, and the selection of  
3           materials to be used in the construction of State highways under the  
4           authority of this Chapter.
- 5           (2)    To take over and assume exclusive control for the benefit of the State  
6           of any existing county or township roads, and to locate and acquire  
7           rights-of-way for any new roads that may be necessary for a State  
8           highway system, and subject to the provisions of G.S. 136-19.5(a) and  
9           (b) also locate and acquire such additional rights-of-way as may be  
10          necessary for the present or future relocation or initial location, above  
11          or below ground, of telephone, telegraph, electric and other lines, as  
12          well as gas, water, sewerage, oil and other pipelines, to be operated by  
13          public utilities as defined in G.S. 62-3(23) and which are regulated  
14          under Chapter 62 of the General Statutes, or by municipalities,  
15          counties, any entity created by one or more political subdivisions for  
16          the purpose of supplying any such utility services, electric membership  
17          corporations, telephone membership corporations, or any combination  
18          thereof, with full power to widen, relocate, change or alter the grade or  
19          location thereof and to change or relocate any existing roads that the  
20          Department of Transportation may now own or may acquire; to  
21          acquire by gift, purchase, or otherwise, any road or highway, or tract  
22          of land or other property whatsoever that may be necessary for a State  
23          highway system and adjacent utility rights-of-way: Provided, all  
24          changes or alterations authorized by this subdivision shall be subject to  
25          the provisions of G.S. 136-54 to 136-63, to the extent that said sections  
26          are applicable: Provided, that nothing in this Chapter shall be  
27          construed to authorize or permit the Department of Transportation to  
28          allow or pay anything to any county, township, city or town, or to any  
29          board of commissioners or governing body thereof, for any existing  
30          road or part of any road heretofore constructed by any such county,  
31          township, city or town, unless a contract has already been entered into  
32          with the Department of Transportation.
- 33          (3)    To provide for such road materials as may be necessary to carry on the  
34          work of the Department of Transportation, either by gift, purchase, or  
35          condemnation: Provided, that when any person, firm or corporation  
36          owning a deposit of sand, gravel or other material, necessary, for the  
37          construction of the system of State highways provided herein, has  
38          entered into a contract to furnish the Department of Transportation any  
39          of such material, at a price to be fixed by said Department of  
40          Transportation, thereafter the Department of Transportation shall have  
41          the right to condemn the necessary right-of-way under the provisions  
42          of Article 9 of Chapter 136, to connect said deposit with any part of  
43          the system of State highways or public carrier, provided that easements  
44          to material deposits, condemned under this Article shall not become a

- 1 public road and the condemned easement shall be returned to the  
2 owner as soon as the deposits are exhausted or abandoned by the  
3 Department of Transportation.
- 4 (4) To enforce by mandamus or other proper legal remedies all legal rights  
5 or causes of action of the Department of Transportation with other  
6 public bodies, corporations, or persons.
- 7 (5) To make rules, regulations and ordinances for the use of, and to police  
8 traffic on, the State highways, and to prevent their abuse by  
9 individuals, corporations and public corporations, by trucks, tractors,  
10 trailers or other heavy or destructive vehicles or machinery, or by any  
11 other means whatsoever, and to provide ample means for the  
12 enforcement of same; and the violation of any of the rules, regulations  
13 or ordinances so prescribed by the Department of Transportation shall  
14 constitute a misdemeanor: Provided, no rules, regulations or  
15 ordinances shall be made that will conflict with any statute now in  
16 force or any ordinance of incorporated cities or towns, except the  
17 Department of Transportation may regulate parking upon any street  
18 which forms a link in the State highway system, if said street be  
19 maintained with State highway funds.
- 20 (6) To establish a traffic census to secure information about the relative  
21 use, cost, value, importance, and necessity of roads forming a part of  
22 the State highway system, which information shall be a part of the  
23 public records of the State, and upon which information the  
24 Department of Transportation shall, after due deliberation and in  
25 accordance with these established facts, proceed to order the  
26 construction of the particular highway or highways.
- 27 (7) To assume full and exclusive responsibility for the maintenance of all  
28 roads other than streets in towns and cities, forming a part of the State  
29 highway system from date of acquiring said roads. The Department of  
30 Transportation shall have authority to maintain all streets constructed  
31 by the Department of Transportation in towns of less than 3,000  
32 population by the last census, and such other streets as may be  
33 constructed in towns and cities at the expense of the Department of  
34 Transportation, whenever in the opinion of the Department of  
35 Transportation it is necessary and proper so to do.
- 36 (8) To give suitable names to State highways and change the names as  
37 determined by the Board of Transportation of any highways that shall  
38 become a part of the State system of highways.
- 39 (9) To employ appropriate means for properly selecting, planting and  
40 protecting trees, shrubs, vines, grasses or legumes in the highway  
41 right-of-way in the promotion of erosion control, landscaping and  
42 general protection of said highways; to acquire by gift or otherwise  
43 land for and to construct, operate and maintain roadside parks, picnic  
44 areas, picnic tables, scenic overlooks and other appropriate turnouts for

1 the safety and convenience of highway users; and to cooperate with  
2 municipal or county authorities, federal agencies, civic bodies and  
3 individuals in the furtherance of those objectives. None of the  
4 roadside parks, picnic areas, picnic tables, scenic overlooks or other  
5 turnouts, or any part of the highway right-of-way shall be used for  
6 commercial purposes except for vending machines permitted by the  
7 Department of Transportation and placed by the Division of Services  
8 for the Blind, Department of Human Resources, as the State licensing  
9 agency designated pursuant to Section 2(a)(5) of the Randolph-  
10 Sheppard Act (20 USC 107a(a)(5)). The Department of  
11 Transportation shall regulate the placing of the vending machines in  
12 highway rest areas and shall regulate the articles to be dispensed.  
13 Every other use or attempted use of any of these areas for commercial  
14 purposes shall constitute a misdemeanor and each day's use shall  
15 constitute a separate offense.

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

32 (11) To regulate, abandon and close to use, grade crossings on any road  
33 designated as part of the State highway system, and whenever a public  
34 highway has been designated as part of the State highway system and  
35 the Department of Transportation, in order to avoid a grade crossing or  
36 crossings with a railroad or railroads, continues or constructs the said  
37 road on one side of the railroad or railroads, the Department of  
38 Transportation shall have power to abandon and close to use such  
39 grade crossings; and whenever an underpass or overhead bridge is  
40 substituted for a grade crossing, the Department of Transportation  
41 shall have power to close to use and abandon such grade crossing and  
42 any other crossing adjacent thereto.

43 (12) The Department of Transportation shall have such powers as are  
44 necessary to comply fully with the provisions of the present or future

1 federal aid acts. The said Department of Transportation is hereby  
2 authorized to enter into all contracts and agreements with the United  
3 States government relating to survey, construction, improvement and  
4 maintenance of roads, urban area traffic operations studies and  
5 improvement projects on the streets on the State highway system and  
6 on the municipal system in urban areas, under the provisions of the  
7 present or future congressional enactments, to submit such scheme or  
8 program of construction or improvement and maintenance as may be  
9 required by the Secretary of Transportation or otherwise provided by  
10 federal acts, and to do all other things necessary to carry out fully the  
11 cooperation contemplated and provided for by present or future aid  
12 acts of Congress for the construction or improvement and maintenance  
13 of federal aid of State highways. The good faith and credit of the State  
14 are further hereby pledged to make available funds necessary to meet  
15 the requirements of the acts of Congress, present or future,  
16 appropriating money to construct and improve rural post roads and  
17 apportioned to this State during each of the years for which federal  
18 funds are now or may hereafter be apportioned by the said act or acts,  
19 to maintain the roads constructed or improved with the aid of funds so  
20 appropriated and to make adequate provisions for carrying out such  
21 construction and maintenance. The good faith and credit of the State  
22 are further pledged to maintain such roads now built with federal aid  
23 and hereafter to be built and to make adequate provisions for carrying  
24 out such maintenance. Upon request of the Department of  
25 Transportation and in order to enable it to meet the requirements of  
26 acts of Congress with respect to federal aid funds apportioned to the  
27 State of North Carolina, the State Treasurer is hereby authorized, with  
28 the approval of the Governor and Council of State, to issue short term  
29 notes from time to time, and in anticipation of State highway revenue,  
30 and to be payable out of State highway revenue for such sums as may  
31 be necessary to enable the Department of Transportation to meet the  
32 requirements of said federal aid appropriations, but in no event shall  
33 the outstanding notes under the provisions of this section amount to  
34 more than two million dollars (\$2,000,000).

35 (13) The Department of Transportation is authorized and empowered to  
36 construct and maintain all walkways and driveways within the  
37 Mansion Square in the City of Raleigh including the approaches  
38 connecting with the city streets, and any funds expended therefor shall  
39 be a charge against general maintenance.

40 (14) The Department of Transportation shall have authority to provide  
41 roads for the connection of airports in the State with the public  
42 highway system, and to mark the highways and erect signals along the  
43 same for the guidance and protection of aircraft.

- 1 (15) The Department of Transportation shall have authority to provide  
2 facilities for the use of waterborne traffic by establishing connections  
3 between the highway system and the navigable waters of the State by  
4 means of connecting roads and piers.
- 5 (16) The Department of Transportation, pursuant to a resolution of the  
6 Board of Transportation, shall have authority, under the power of  
7 eminent domain and under the same procedure as provided for the  
8 acquirement of rights-of-way, to acquire title in fee simple to parcels  
9 of land for the purpose of exchanging the same for other real property  
10 to be used for the establishment of rights-of-way or for the widening of  
11 existing rights-of-way or the clearing of obstructions that, in the  
12 opinion of the Department of Transportation, constitute dangerous  
13 hazards at intersections. Real property may be acquired for such  
14 purposes only when the owner of the property needed by the  
15 Department of Transportation has agreed in writing to accept the  
16 property so acquired in exchange for that to be used by the Department  
17 of Transportation, and when, in the opinion of the Department of  
18 Transportation, an economy in the expenditure of public funds and the  
19 improvement and convenience and safety of the highway can be  
20 effected thereby.
- 21 (17) The Department of Transportation is hereby authorized and required to  
22 maintain and keep in repair, sufficient to accommodate the public  
23 school buses, roads leading from the state-maintained public roads to  
24 all public schools and public school buildings to which children are  
25 transported on public school buses to and from their homes. Said  
26 Department of Transportation is further authorized to construct, pave,  
27 and maintain school bus driveways and sufficient parking facilities for  
28 the school buses at those schools. The Department of Transportation  
29 is further authorized to construct, pave, and maintain all other  
30 driveways and entrances to the public schools leading from public  
31 roads not required in the preceding portion of this subdivision.
- 32 (18) To cooperate with appropriate agencies of the United States in  
33 acquiring rights-of-way for and in the construction and maintenance of  
34 flight strips or emergency landing fields for aircraft adjacent to State  
35 highways.
- 36 (19) To prohibit the erection of any informational, regulatory, or warning  
37 signs within the right-of-way of any highway project built within the  
38 corporate limits of any municipality in the State where the funds for  
39 such construction are derived in whole or in part from federal  
40 appropriations expended by the Department of Transportation, unless  
41 such signs have first been approved by the Department of  
42 Transportation.
- 43 (20) The Department of Transportation is hereby authorized to maintain  
44 and keep in repair a suitable way of ingress and egress to all public or

1 church cemeteries or burial grounds in the State notwithstanding the  
2 fact that said road is not a part of the state-maintained system of roads.  
3 For the purpose of this subdivision a public or church cemetery or  
4 burial ground shall be defined as a cemetery or burial ground in which  
5 there are buried or permitted to be buried deceased persons of the  
6 community in which said cemetery or burial ground is located, but  
7 shall not mean a privately owned cemetery operated for profit or  
8 family burial plots.

9 (21) The Department of Transportation is hereby authorized and directed to  
10 remove all dead animals from the traveled portion and rights-of-way of  
11 all primary and secondary roads and to dispose of such animals by  
12 burial or otherwise. In cases where there is evidence of ownership  
13 upon the body of any dead dog, the Department of Transportation shall  
14 take reasonable steps to notify the owner thereof by mail or other  
15 means.

16 (22) No airport or aircraft landing area shall be constructed or altered where  
17 such construction or alteration when undertaken or completed may  
18 reasonably affect motor vehicle operation and safety on adjoining  
19 public roads except in accordance with a written permit from the  
20 Department of Transportation or its duly authorized officers. The  
21 Department of Transportation is authorized and empowered to regulate  
22 airport and aircraft landing area construction and alteration in order to  
23 preserve safe clearances between highways and airways and the  
24 Department of Transportation is authorized and empowered to make  
25 rules, regulations, and ordinances for the preservation of safe  
26 clearances between highways and airways. The Department of  
27 Transportation shall be responsible for determining safe clearances and  
28 shall fix standards for said determination which shall not exceed the  
29 standards adopted for similar purposes by the United States Bureau of  
30 Public Roads under the Federal Aid Highway Act of 1958. Any  
31 person, firm, corporation or airport authority constructing or altering  
32 an airport or aircraft landing area without obtaining a written permit as  
33 herein provided, or not in compliance with the terms of such permit, or  
34 violating the provisions of the rules, regulations or ordinances  
35 promulgated under the authority of this section shall be guilty of a  
36 misdemeanor punishable in the discretion of the court; provided, that  
37 this subdivision shall not apply to publicly owned and operated  
38 airports and aircraft landing areas receiving federal funds and subject  
39 to regulation by the Federal Aviation Authority.

40 (23) When in the opinion of the Department of Transportation an economy  
41 in the expenditure of public funds can be effected thereby, the  
42 Department of Transportation shall have authority to enter into  
43 agreements with adjoining states regarding the planning, location,  
44 engineering, right-of-way acquisition and construction of roads and

1 bridges connecting the North Carolina State highway system with  
2 public roads in adjoining states, and the Department of Transportation  
3 shall have authority to do planning, surveying, locating, engineering,  
4 right-of-way acquisition and construction on short segments of roads  
5 and bridges in adjoining states with the cost of said work to be  
6 reimbursed by the adjoining state, and may also enter into agreements  
7 with adjoining states providing for the performance of and  
8 reimbursement to the adjoining state of the cost of such work done  
9 within the State of North Carolina by the adjoining state: Provided,  
10 that the Department of Transportation shall retain the right to approve  
11 any contract for work to be done in this State by an adjoining state for  
12 which the adjoining state is to be reimbursed.

13 (24) The Department of Transportation is further authorized to pave  
14 driveways leading from state-maintained roads to rural fire district  
15 firehouses which are approved by the North Carolina Fire Insurance  
16 Rating Bureau and to facilities of rescue squads furnishing ambulance  
17 services which are approved by the North Carolina State Association  
18 of Rescue Squads, Inc.

19 (25) The Department of Transportation is hereby authorized and directed to  
20 design, construct, repair, and maintain paved streets and roads upon  
21 the campus of each of the State's institutions of higher education, at  
22 state-owned hospitals for the treatment of tuberculosis, state-owned  
23 orthopedic hospitals, juvenile correction centers, mental health  
24 hospitals and retarded centers, schools for the deaf, and schools for the  
25 blind, when such construction, maintenance, or repairs have been  
26 authorized by the General Assembly in the appropriations bills enacted  
27 by the General Assembly. Cost for such construction, maintenance,  
28 and repairs shall be borne by the Highway Fund. Upon the General  
29 Assembly authorizing the construction, repair, or maintenance of a  
30 paved road or drive upon any of the above-mentioned institutions, the  
31 Department of Transportation shall give such project priority to insure  
32 that it shall be accomplished as soon as feasible, at the minimum cost  
33 to the State, and in any event during the biennium for which the  
34 authorization shall have been given by the General Assembly.

35 (26) The Department of Transportation, at the request of a representative  
36 from a board of county commissioners, is hereby authorized to acquire  
37 by condemnation new or additional right-of-way to construct, pave or  
38 otherwise improve a designated State-maintained secondary road upon  
39 presentation by said board to the Department of Transportation of a  
40 duly verified copy of the minutes of its meeting showing approval of  
41 such request by a majority of its members and by the further  
42 presentation of a petition requesting such improvement executed by  
43 the abutting owners whose frontage on said secondary road shall equal  
44 or exceed seventy-five percent (75%) of the linear front footage along



1 the secondary road sought to be improved. This subdivision shall not  
2 be construed to limit the authority of the Department of Transportation  
3 to exercise the power of eminent domain.

4 (27) The Department of Transportation ~~is authorized to~~ shall establish  
5 policies and ~~promulgate~~ issue rules providing for voluntary property  
6 owner or highway user participation in the costs of maintenance or  
7 improvement of roads which would not otherwise be necessary or  
8 would not otherwise be performed by the Department of  
9 Transportation and which will result in a benefit to the property owner  
10 or highway user. By way of illustration and not as a limitation, such  
11 costs include those incurred in connection with drainage improvements  
12 or maintenance, driveway connections, dust control on unpaved roads,  
13 surfacing or paving of roads and the acquisition of rights-of-way.  
14 Property owner and highway user participation can be in the form of  
15 materials, money, or land (for right-of-way) as deemed appropriate by  
16 the Department of Transportation. The authority of this section shall  
17 not be used to authorize, construct or maintain toll roads or bridges.

18 (28) The Department of Transportation may obtain land, either by gift,  
19 lease or purchase which shall be used for the construction and  
20 maintenance of ridesharing parking lots. The Department may design,  
21 construct, repair, and maintain ridesharing parking facilities.

22 (29) The Department of Transportation may establish policies and adopt  
23 rules about the size, location, direction of traffic flow, and the  
24 construction of driveway connections into any street or highway which  
25 is a part of the State Highway System. The Department of  
26 Transportation may require the construction and public dedication of  
27 acceleration and deceleration lanes, and traffic storage lanes and  
28 medians by others for the driveway connections into any United States  
29 route, or North Carolina route, and on any secondary road route with  
30 an average daily traffic volume of 4,000 vehicles per day or more."

31 Sec. 3. This act is effective upon ratification and the Department of  
32 Transportation shall issue the rules required by Section 2 of this act within 90 days of  
33 the effective date of this act.