

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

**BILL NUMBER:** House Bill 44, Proposed Committee Substitute

**SHORT TITLE:** Condemnation Awarding Costs

**SPONSOR(S):** Representative John R. Gamble, Jr.

**FISCAL IMPACT:**      **Expenditures:**      **Increase (x)**      **Decrease ( )**  
                         **Revenues:**              **Increase ( )**      **Decrease ( )**  
                         **No Impact ( )**  
                         **No Estimate Available ( )**

**FUND AFFECTED:**      **General Fund ( )**      **Highway Fund (x)**      **Local Govt. ( )**  
                         **Other Funds (x)**      **Highway Trust Fund**

**BILL SUMMARY:** An Act to provide for the awarding of costs when the judgment in a condemnation action is larger than the deposit by DOT.

**EFFECTIVE DATE:** Effective upon ratification.

**PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED:** Department of Transportation

	<b>FISCAL IMPACT</b>			
	1993-94	1994-95	1995-96	1996-97
	1997-98			
	<u>FY</u>	<u>FY</u>	<u>FY</u>	<u>FY</u>
	<u>FY</u>			
<b>REVENUES:</b>				
<b>GENERAL FUND</b>				
<b>HIGHWAY FUND</b>				
<b>HIGHWAY TRUST FUND</b>				
<b>LOCAL</b>				
<b>EXPENDITURES</b>	\$6,999,000	\$7,250,964	\$7,502,928	\$7,754,892
	\$8,006,856			

**POSITIONS:**

**ASSUMPTIONS AND METHODOLOGY:**

The proposed committee substitute requires the Department of Transportation to reimburse a property owner for attorney fees, appraisal fees, and engineering fees when the final judgment in a condemnation proceeding is an amount greater than 150% (was 110% in original bill) of the amount deposited with the court. When a person or firm contests DOT's condemnation of their property in court, DOT must deposit with the court an amount equal to the appraised value of the property. As of December 31, 1992, 623 cases were pending in the Attorney General's Office with total deposits of \$37,208,542 for an average of \$59,724 per case.

According to the AG's office, private attorneys in condemnation cases receive 33% to 40% of the difference between the amount deposited with the court and the final judgment amount. In 1992, the Attorney General's office obtained final judgments in 255 cases, of which 115 cases resulted in payments exceeding 150% of the deposit amount. The amount deposited for the 115 cases exceeding the 150% threshold was \$5,342,144 and the final judgment amount was \$13,565,000, leaving a difference of \$8,222,856. If HB 44 had been enforced in 1992 the state would have paid between \$2,713,542 to \$3,289,142 in attorney fees in 1992. This is an average of \$23,596 to \$28,601 per case.

HB 44 would also require DOT to pay for appraisal fees for the 115 cases in 1992. DOT pays \$75 per hour for an appraisal, but some firms charge \$150 to \$175 per hour. In 1992, DOT paid an average of \$2,200 per appraisal and used 2 appraisals in most cases. Assuming \$4,400 in appraisal fees per case, DOT would have reimbursed the property owners \$506,000 in the 115 cases in 1992. DOT was not able to provide information on other reimbursable costs such as land planners, surveyors or engineers hired by the property owner.

South Carolina and Florida are two states in the Southeast that pay attorney's fees and other costs in condemnation cases. No data was available for South Carolina, but the state of Florida had 502 cases in fiscal year 1991-92 in which it paid \$7.5 million in attorney fees and \$3.3 million in other costs. This equaled \$14,940 per case for attorney fees and \$6,574 per case for other costs.

While the Federal Highway Administration will participate in the cost of road construction on the federal highway system, it will not pay for costs mandated by HB 44. This cost must be borne by the Highway Fund and the Highway Trust Fund.

Passage of the Highway Trust Fund in 1989 has increased the amount of road construction in the state and thus increased the number of right-of-way claims. Condemnation cases have risen from 517 with deposits of \$24.3 million in 1990 to 623 cases with deposits of \$37.2 million in 1992. The number of cases is expected to rise as DOT embarks on the construction of 7 Urban Loop projects that entail more complex right-of-way negotiations that often end up in court. In addition to the increase in caseloads due to the Highway Trust Fund, it is anticipated that HB 44 will encourage attorneys to be more aggressive in soliciting clients to challenge DOT appraisals. Any significant increase in caseloads will require additional lawyers for the Attorney General's staff. The Highway Fund pays for all AG attorneys assigned to DOT.

### Conclusion

Cost for FY 1993-94 is based on the following:

1) Attorney fees are assumed to be one-third of the difference between the amount deposited with the court and the final judgment. For 1992 this was \$23,596 per case. The attorney cost per case grew 78% from 1991 to 1992, but there is not enough data to determine a growth factor for the next five years. In Florida, the attorney cost per case dropped 17% from 1991 to 1992 even though the number of cases increased 60%. 1992 costs will be used for the five year fiscal note.

2) Assuming average appraisal cost is \$2,200 and there are two appraisals per case, then the appraisal cost per case is a minimum of \$4,400 per case.

3) Total cost per case is  $\$23,596 + \$4,400 = \$27,996$ .

4) DOT estimates 250 cases will be affected by House Bill 44 in 1993. This number will be used as the base year and will be inflated 3.4% over the five year period of this fiscal note. 3.4% is the recent growth rate in cases from 1991 to 1992.

	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>
Cases	250	259	268	277	286
Cost	<u>27,996</u>	<u>27,996</u>	<u>27,996</u>	<u>27,996</u>	<u>27,996</u>
	6,999,000	7,250,964	7,502,928	7,754,892	8,006,856

**SOURCES OF DATA:** DOT Right-of-Way Branch, Attorney General's Office

**FISCAL RESEARCH DIVISION**

**733-4910**

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**DATE:** May 4, 1993



**Signed Copy Located in the NCGA Principal Clerk's Offices**