

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Fiscal Note

BILL NUMBER: House Bill 272 (Third Edition)

SHORT TITLE: DOT Condemnation Changes.

SPONSOR(S): Representatives Stam, Jackson, and Bryan

FISCAL IMPACT					
(\$ in millions)					
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> No Estimate Available		
State Impact	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
General Fund Revenues:	0.0	0.0	0.0	0.0	0.0
General Fund Expenditures:	0.0	0.0	0.0	0.0	0.0
HTF Revenues:	0.0	0.0	0.0	0.0	0.0
HTF Expenditures:	0.0	0.0	Minimal Section 1 Impact	\$568,120, plus Minimal Section 1 Impact	\$868,120- \$2,056,920
State Positions:	0.0	0.0	0.0	0.0	0.0
NET STATE IMPACT	\$0.0	\$0.0	Minimal	Minimal	\$465,000- \$3,375,000

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation

EFFECTIVE DATE: July 1, 2014

TECHNICAL CONSIDERATIONS:
Yes - See Technical Considerations Section

BILL SUMMARY:

Section 1 of the bill requires interest on the DOT condemnation award to be paid from the date of taking to the date the judgment is paid.

Section 2 of the bill authorizes the court, in a DOT condemnation action, to award reasonable attorney fees, appraisal fees, and engineering fees, if final judgment exceeds the amount of the initial deposit by 25% or more. Attorneys' fees awarded are not to exceed one-third of the difference between the judgment award, plus interest, and the initial deposit.

EFFECTIVE DATE: This act becomes effective July 1, 2014, and applies to condemnation actions filed on or after that date.

ASSUMPTIONS AND METHODOLOGY:

Section One:

Section 1 expands the amount of time the Department of Transportation must pay interest from the date of judgment to the date the judgment is paid. This change adds approximately 10 to 30 days to the time DOT will pay interest. The chart below summarizes the impact of Section 2 had this law been in effect when the condemnations occurred. The Department would have paid additional interest ranging from \$158,557 to \$482,177 in FY2012.

Chart One: Interest Accrued if Section 1 in Effect from FY2008-FY2012					
FY	Number of Consent Judgments and Jury Trials	Total Awards Less Deposits	Additional Interest Accrued		
			10 Days	20 Days	One Month
FY2012	352	\$72,341,494	\$158,557	\$317,113	\$482,277
FY2011	294	\$39,140,343	\$85,787	\$171,574	\$260,936
FY2010	197	\$19,827,940	\$43,458	\$86,917	\$132,186
FY2009	181	\$22,857,814	\$50,099	\$100,199	\$152,385
FY2008	169	\$32,286,046	\$70,764	\$141,528	\$215,240

Based on Section 1, no fiscal impact is expected until FY 2016 and the impact is expected to be minimal in FY 2016 and represent only consent judgments, not any jury awards. It will take three to four fiscal years for the fiscal impact to be fully realized, which will occur when all settlements or jury verdicts are based on condemnations that include the resulting interest accrual. The fiscal impact from the additional interest accrual is expected to increase in each fiscal year after FY2016 as more applicable condemnations reach settlement or jury award.

It is reasonable to assume the impact will be at least \$300,000 by FY 2018.

DOT states “It is anticipated that the number of condemnation claims will increase significantly as a result of the passage of this bill, thereby increasing the expenditures.” This analysis does not address DOT’s concern that DOT will be required to condemn more property because property owners may be less likely to settle. If DOT’s assertion is correct, the fiscal impact in Section 1 will increase by an unknown amount.

The Administrative Office of the Courts (AOC) does not expect any fiscal impact to the courts from Section 1.

Section Two:

Section 2 requires that DOT pay reasonable attorney’s fees, appraisal fees, and engineering fees incurred by the property owner if the final judgment in a jury trial exceeds the amount of initial deposit by 25% or more. Attorney’s fees cannot exceed one-third the difference between the jury award, plus interest, less deposit. The Attorney General’s office states that “nearly all of our

verdicts” are more than 25% above deposit, and paying lawyer fees will “reduce any incentive to settle by the property owner or his attorney.... [and encourage attorneys to] drag cases out as long as possible, and engage in unnecessary discovery.”

Chart 2: Cases Filed and % Increase of Award over Deposit							
FY	Number of Cases Filed			Award Less Deposit		Percent Increase of Award over Deposit	
	Condemnation	Consent Judgment	Jury Verdict	Consent Judgment	Jury Verdict	Consent Judgment	Jury Verdict
FY2012	612	335	17	\$ 67,903,149	\$ 4,438,345	88%	137%
FY2011	496	276	18	\$ 33,009,331	\$ 6,151,012	72%	107%
FY2010	488	188	9	\$ 17,364,993	\$ 2,462,947	63%	201%
FY2009	303	169	12	\$ 20,814,197	\$ 2,043,617	105%	124%
FY2008	333	160	9	\$ 13,744,462	\$ 18,541,584	108%	297%

DOT believes all FY2012 jury verdicts exceeded the bill’s 25% threshold. Therefore, the analysis assumes all jury trial fees will be paid by DOT in the future once this bill applies to all condemnation proceedings. Based on feedback from several NC attorneys specializing in condemnation, most attorneys charge a contingency fee that ranges from 25% to 33% of the award plus interest less deposit. This bill requires the State to pay legal fees based on the typical attorney practice to base condemnation legal fees on a contingency basis. The property owner will be responsible for any contingency-based legal fees that exceed the amount reimbursed by the State.

Disagreement exists as to whether this bill will increase or decrease the number of jury trials. Incurring the additional cost of fees may encourage DOT to increase settlement offers to avoid trial. Some also believe DOT uses internal appraisal staff and contracted appraisers that may generate appraisals lower than other appraisers, or use different methodologies to produce lower damage assessments. A higher initial appraisal will likely encourage more settlements, but the appraisal process is regulated to prevent discrepancies. While the argument may be legitimate, it is anecdotal and has not been proven. In terms of the potential to increase jury trials, it is feasible that some landowners will risk going to trial in order to benefit from the State’s payment of legal, appraisal, and engineering fees. The change made between version 2 and the current version 3 of this bill alters the attorney’s fee to base reimbursement on the contingency fee basis rather than the prevailing jurisdictional hourly rate. This change may produce higher attorney fee reimbursement amounts. The inclusion of interest as part of the reimbursable allowable expense incurred by the State may also increase costs to the State on a case-by-case basis. The attorney fee contingency plus interest brings more credence to the possibility that property owners will pursue trial in condemnations involving substantial sums. Given the data in Chart 2, a property owner may reasonably conclude that jury trials produce higher awards than settlements, and that awards predominantly exceed the bill’s 25% threshold. This analysis assumes that the arguments that lead to both fewer and more trials will both factor into a property owner’s decision whether to settle,

whether to hire a lawyer, and whether to go to trial. Given the minimal number of condemnations that end in jury trial, this analysis assumes these factors will cancel each other out and the small number of jury trials will continue.

Chart 3 indicates a fiscal impact of \$568,120 in FY2017 and \$1,756,920 in FY 2018. The fiscal analysis for Section 2 makes the following assumptions:

1. Given the level of percentage increase of the award in existing verdict trials (137% in FY2012), this analysis assumes that all jury award cases will apply to this bill.
2. This analysis does not assume the bill will lead to a decrease or increase in the number of cases going to jury verdict. The number of jury trials is based on an annual average of 20 cases per year by FY2017, prorated to the number that are applicable based on the bill's effective date.
3. The jury award less deposit will range from \$3 million to \$7 million annually, or \$292,000 per case, without interest. These figures represent the average of the last three years of actual data, as presented in Chart 2.
4. Based on 8% interest, the base amount of verdict, plus interest, less deposit will increase the average case's base amount to \$373,760. This analysis assumes the average time from condemnation to trial is 3 ½ years for the purposes of calculating interest for FY 2018 and prorates the time limits to determine the fiscal impact in FY 2017.
5. This analysis assumes the time period at which deposit is based for all cases identified in Chart 3 is the bill's effective date.
6. While the bill states the award "may not exceed one-third" of the difference in judgment, plus interest, less deposit, for purposes of this analysis 30% reimbursement is used to calculate attorney fees.
7. Appraisal fees average \$2,500 per case.
8. Engineering fees average \$5,000 and are used in 50% of jury trials.
9. Due to the bill's effective date, it is assumed that 25% of the annualized fiscal impact will be incurred in FY2017 and 75% of the fiscal impact will be felt in FY2018. The full fiscal impact of this bill will occur after FY 2018.
10. DOT states "It is anticipated that the number of condemnation claims will increase significantly as a result of the passage of this bill, thereby increasing the expenditures." This analysis does not address DOT's concern that DOT will be required to condemn more property because property owners may be less likely to settle. If DOT's assertion is correct, it is assumed that 5% of all additional condemnation proceedings will proceed to trial.

Chart 3: Potential Fiscal Impact of Section 2					
	Potential Number of Jury Trials on Condemnations Filed after 7/1/14	Attorney Fees	Appraisal Fees	Engineering Fees	Total
FY2014	Bill Not In Effect				
FY2015	0				\$0
FY2016	0				\$0
FY2017	5	\$543,120	\$12,500	\$12,500	\$568,120
FY2018	15	\$1,681,920	\$37,500	\$37,500	\$1,756,920

Noteworthy is the acknowledgement that the payment of interest may be significantly higher than shown in this analysis for cases that span many years. Additionally, cases will exist in which substantial award payments are made. These awards will far exceed the averages used in this analysis and significantly increase the interest payment calculated in the reimbursed attorney expenses. These exceptions are not represented in this fiscal analysis.

AOC does not expect any fiscal impact to the courts from Section 2.

SOURCES OF DATA: NC Administrative Office of the Courts, NC Department of Transportation, NC Bar Association, NC Justice Department, and Attorneys from 1) Cranfill, Sumer & Hartzog, 2) Hansen Law Firm, PLLC, 3) Brooks Pierce, and 4) Manning Fulton.

TECHNICAL CONSIDERATIONS:

According to DOT, “It is the interpretation of the NCDOT that the proposed provisions of HB 272 will apply to every claim that is settled after condemnation has been filed and exceeds 25% of the initial deposit, and not just those claims actually determined by a jury trial.” This analysis is based on the interpretation that Section 2 of this bill applies only to jury trials. General Assembly legal staff agrees with the interpretation that Section 2 of this bill applies only to jury trials. If the courts makes the determination that the DOT interpretation is correct, the fiscal analysis for Section 2 will be substantially higher.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Amna Cameron and William Childs

APPROVED BY:

Mark Trogon, Director
Fiscal Research Division

DATE: April 17, 2014



Signed Copy Located in the NCGA Principal Clerk's Offices