

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE DRH10067-ML-38A (01/22)

Short Title: DOT Condemnation Changes. (Public)

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

Referred to:

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

14 The General Assembly of North Carolina enacts:

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

16 "§ 136-112. Measure of damages.

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

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

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

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

29 "§ 136-113. Interest as a part of just compensation.

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

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

36 "§ 136-119. Costs and appeal.



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

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

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

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

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

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

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

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

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

43 **"§ 136-89.53. New and existing facilities; grade crossing eliminations.**

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

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

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

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

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