

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 127
Committee Substitute Favorable 3/25/15

Short Title: DOT Condemnation Changes.

(Public)

Sponsors:

Referred to:

March 3, 2015

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; AND TO PROVIDE THAT THE DEPARTMENT OF TRANSPORTATION
9 SHALL SEND ANY RELOCATION NOTICE REQUIRED BY FEDERAL LAW
10 WITHIN A SPECIFIED PERIOD OF TIME.

11 The General Assembly of North Carolina enacts:

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

13 **"§ 136-112. Measure of damages.**

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

16 (1) Where only a part of a tract is taken, the measure of damages for said taking
17 shall be the difference between the fair market value of the entire tract
18 immediately prior to said taking and the fair market value of the remainder
19 immediately after said taking, ~~with~~ without consideration being given to any
20 special or general benefits resulting from the utilization of the part taken for
21 highway purposes.

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

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

25 **"§ 136-113. Interest as a part of just compensation.**

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

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

32 **"§ 136-119. Costs and appeal.**

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



1 (b) The court having jurisdiction of the condemnation action instituted by the
2 Department of Transportation to acquire real property by condemnation shall award the owner
3 of any right, or title to, or interest in, such real property such sum as will in the opinion of the
4 court reimburse such owner for ~~his reasonable cost,~~costs, disbursements, and expenses, as
5 specified in G.S. 40A-8, including reasonable attorney fees, appraisal, and engineering fees,
6 actually incurred because of the condemnation proceedings, if (i) ~~the~~ and reasonable attorneys'
7 fees, if any of the following apply:

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

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

11 (3) The final judgment exceeds the amount of the deposit, including additional
12 deposits made at least six months before the verdict, by twenty-five percent
13 (25%) or more. Attorneys' fees awarded pursuant to this subdivision shall
14 not exceed one-third of the difference between the judgment award, plus
15 interest, and the deposit. In considering what attorneys' fees are reasonable,
16 the judge shall consider the extent to which the party has provided to the
17 other party, in advance of the trial, the written appraisal reports of those
18 witnesses testifying at trial.

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. 136-103(a) reads as rewritten:

26 "(a) In case condemnation shall become necessary the Department of Transportation
27 shall institute a civil action by filing in the superior court of any county in which the land is
28 located a complaint and a declaration of taking declaring that such land, easement, or interest
29 therein is thereby taken for the use of the Department of Transportation. The Department of
30 Transportation shall provide any written notice of relocation required by federal law together
31 with the summons, complaint, declaration of taking, and notice of deposit required by
32 G.S. 136-103(d)."

33 **SECTION 5.** Sections 2 and 4 of this act become effective October 1, 2015, and
34 apply to condemnation actions filed on or after that date. The remainder of this act becomes
35 effective July 1, 2016, and applies to condemnation actions filed on or after that date.