

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 157

Short Title: Eminent Domain. (Public)

Sponsors: Senators Berger of Rockingham; Allran, Blake, Brock, Brown, East, Forrester, Goodall, Hunt, Jacumin, Stevens, and Tillman.

Referred to: Judiciary I.

February 12, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW DIFFERENTIAL TREATMENT OF NONPROFIT  
3 ORGANIZATIONS WHOSE PROPERTY IS CONDEMNED SO AS TO ALLOW  
4 REPLACEMENT VALUE RATHER THAN FAIR MARKET VALUE.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 40A-64 reads as rewritten:

7 "§ 40A-64. Compensation for taking.

8 (a) Except as provided in ~~subsection (b)~~, subsections (b), (d), and (e) of this section, the  
9 measure of compensation for a taking of property is its fair market value.

10 (b) If there is a taking of less than the entire tract, the measure of compensation is the  
11 greater of either (i) the amount by which the fair market value of the entire tract immediately  
12 before the taking exceeds the fair market value of the remainder immediately after the taking;  
13 or (ii) the fair market value of the property taken.

14 (c) If the owner is to be allowed to remove any timber, building or other permanent  
15 improvement, or fixtures from the property, the value thereof shall not be included in the  
16 compensation award, but the cost of removal shall be considered as an element to be  
17 compensated.

18 (d) The fair market value of property owned by an entity organized and operated upon a  
19 nonprofit basis is deemed to be not less than the reasonable cost of functional replacement if  
20 the following conditions exist:

21 (1) The property is devoted to and is needed by the owner in order to continue in  
22 good faith its actual use to perform a public function or to render nonprofit  
23 educational, religious, charitable, or eleemosynary services; and

24 (2) The facilities or services are available to the general public.

25 (e) The cost of functional replacement under subsection (b) of this section includes:

26 (1) The cost of a functionally equivalent site;

27 (2) The cost of relocating and rehabilitating improvements taken, or if relocation  
28 and rehabilitation is impracticable, the cost of providing improvements of  
29 substantially comparable character and of the same or equal utility; and

30 (3) The cost of betterments and enlargements required by law or by current  
31 construction and utilization standards for similar facilities."

32 SECTION 2. G.S. 136-112 reads as rewritten:

33 "§ 136-112. Measure of damages.

34 (a) Except as provided in subsections (b) and (c) of this section, the ~~The~~ following shall  
35 be the measure of damages to be followed by the commissioners, jury or judge who determines  
36 the issue of damages:



- 1           (1)     Where only a part of a tract is taken, the measure of damages for said taking  
2                   shall be the difference between the fair market value of the entire tract  
3                   immediately prior to said taking and the fair market value of the remainder  
4                   immediately after said taking, with consideration being given to any special  
5                   or general benefits resulting from the utilization of the part taken for  
6                   highway purposes.
- 7           (2)     Where the entire tract is taken the measure of damages for said taking shall  
8                   be the fair market value of the property at the time of taking.
- 9           **(b)     The fair market value of property owned by an entity organized and operated upon a**  
10 **nonprofit basis is deemed to be not less than the reasonable cost of functional replacement if**  
11 **the following conditions exist:**
- 12           **(1)     The property is devoted to and is needed by the owner in order to continue in**  
13 **good faith its actual use to perform a public function or to render nonprofit**  
14 **educational, religious, charitable, or eleemosynary services; and**
- 15           **(2)     The facilities or services are available to the general public.**
- 16           **(c)     The cost of functional replacement under subsection (b) of this section includes:**
- 17           **(1)     The cost of a functionally equivalent site;**
- 18           **(2)     The cost of relocating and rehabilitating improvements taken, or if relocation**  
19 **and rehabilitation is impracticable, the cost of providing improvements of**  
20 **substantially comparable character and of the same or equal utility; and**
- 21           **(3)     The cost of betterments and enlargements required by law or by current**  
22 **construction and utilization standards for similar facilities."**
- 23           **SECTION 3.** This act is effective when it becomes law.