

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE DRS45224-ML-38D (01/22)

Short Title: DOT Condemnation Changes. (Public)

Sponsors: Senators Wells, Krawiec, and Daniel (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE MEASURE OF DAMAGES IN A CONDEMNATION ACTION INITIATED BY THE DEPARTMENT OF TRANSPORTATION, TO PROVIDE THAT INTEREST ON A DOT CONDEMNATION AWARD SHALL BE PAID FROM THE DATE OF TAKING UNTIL THE DATE THE JUDGMENT IS PAID; TO AUTHORIZE A DEFENDANT IN SUCH AN ACTION TO RECOVER ATTORNEYS' FEES AND COSTS IF THE JUDGMENT EXCEEDS THE DEPOSIT BY TWENTY-FIVE PERCENT OR MORE; TO PROVIDE THAT A PROPERTY OWNER IS ENTITLED TO COMPENSATION FOR PARTIAL CONTROL OF ACCESS; AND TO PROVIDE THAT THE DEPARTMENT OF TRANSPORTATION SHALL SEND ANY RELOCATION NOTICE REQUIRED BY FEDERAL LAW WITHIN A SPECIFIED PERIOD OF TIME.

The General Assembly of North Carolina enacts:

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

"§ 136-112. **Measure of damages.**

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

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

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

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

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

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

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

"§ 136-119. **Costs and appeal.**

(a) The Department of Transportation shall pay all court costs taxed by the court. Either party shall have a right of appeal to the Supreme Court for errors of law committed in any



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1 proceedings provided for in this Article in the same manner as in any other civil actions and it
2 shall not be necessary that an appeal bond be posted.

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

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

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

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

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

22 **SECTION 4.** G.S. 136-89.53 reads as rewritten:

23 "**§ 136-89.53. New and existing facilities; grade crossing eliminations.**

24 The Department of Transportation may designate and establish controlled-access highways
25 as new and additional facilities or may designate and establish an existing street or highway as
26 included within a controlled-access facility. When an existing street or highway shall be
27 designated as and included within a controlled-access facility the owners of land abutting such
28 existing street or highway shall be entitled to compensation for the taking of or injury to their
29 easements of ~~access.~~ access, including compensation for partial control of access. The
30 Department of Transportation shall have authority to provide for the elimination of
31 intersections at grade of controlled-access facilities with existing State highways and county
32 roads, and city and town streets, by grade separation or frontage road, or by closing off such
33 roads and streets, or other public ways at the right-of-way boundary line of such
34 controlled-access facility; and after the establishment of any controlled-access facility, no
35 highway or street which is not part of said facility shall intersect the same at grade. No street or
36 [of] any city or town and no State highway, county road, or other public way shall be opened
37 into or connected with any such controlled-access facility without the consent and previous
38 approval of the Department of Transportation. Such consent and approval shall be given only if
39 the public interest shall be served thereby."

40 **SECTION 5.** G.S. 136-103(a) reads as rewritten:

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

48 **SECTION 6.** Section 2 of this act becomes effective July 1, 2015, and applies to
49 condemnation actions filed on or after that date. Section 5 of this act becomes effective October
50 1, 2015, and applies to condemnation actions filed on or after that date. The remainder of this

1 act becomes effective July 1, 2016, and applies to condemnation actions filed on or after that
2 date.