



HOUSE BILL 127: DOT Condemnation Changes

2015-2016 General Assembly

Committee:	Senate Re-ref to Transportation. If fav, re-ref to Judiciary I	Date:	May 19, 2015
Introduced by:	Reps. Stam, Jackson, Bryan	Prepared by:	Giles S. Perry Committee Counsel
Analysis of:	Second Edition		

SUMMARY: *House Bill 127 would make the following changes: 1) modify the measure of damages for Department of Transportation (DOT) condemnations for partial takings by excluding consideration for any special or general benefits resulting from the utilization of the part taken for highway purposes; 2) provide for interest on a DOT condemnation award from date of taking until judgment is paid; 3) authorize reimbursements as provided in a Chapter 40A eminent domain proceeding if certain conditions were met, including a new condition allowing defendants to recover attorney fees and costs if judgment exceeds deposit by 25% or more in DOT condemnations; and 5) provide that DOT must send any relocation notice required by federal law with the required summons, complaint, declaration of taking and notice of deposit.*

CURRENT LAW: Under Article 9 of Chapter 136, the Department of Transportation (DOT) has authority to initiate a condemnation by instituting a civil action in the superior court of any county in which the land is located. DOT must file a complaint and a declaration of taking declaring that the land, easement, or interest is taken for the use of DOT. The complaint and declaration shall be accompanied by the deposit of a sum estimated by the DOT to be just compensation for the taking.

G.S. 136-112 provides the measure of damages as follows:

- Where only a part of a tract is taken, the measure of damages is the difference between the fair market value of the entire tract immediately prior to the 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.
- Where the entire tract is taken, the measure of damages for the taking is the fair market value of the property at the time of taking. In determining just compensation, interest is added from the date of taking to the date of judgment.

G.S. 136-113 requires the judge to add interest at the legal rate of 8% to the damage award from the date of taking to the date of judgment.

G.S. 136-119 requires DOT to pay all court costs taxed by the court. The court must reimburse the owner for reasonable costs, including reasonable attorney fees, appraisal, and engineering fees, if (i) the final judgment is that the DOT cannot acquire real property by condemnation; or (ii) the proceeding is abandoned by the DOT.

Article 6D of Chapter 136 provides for controlled-access facilities, which are State highways especially designed for through traffic, and over, from or to which highway owners or occupants of abutting property, or others, have only a controlled right or easement of access. G.S. 136-89.53 provides that when the DOT designates an existing street or highway within a controlled-access facility, the owners of land abutting such existing street or highway are entitled to compensation for the taking of or injury to their easements of access.

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BILL ANALYSIS:

Section 1: Would provide that the measure of damages for a partial taking in a DOT condemnation action be made without consideration being given to any special or general benefits resulting from the utilization of the part taken for highway purposes.

Section 2: Would provide that the interest in a DOT condemnation be calculated from the date of the taking to the date the judgment is paid (rather than the date of judgment).

This section would become effective October 1, 2015, and apply to condemnation actions filed on or after that date.

Section 3: Would provide that the owner of a property subject to a condemnation action would be awarded reasonable costs, disbursements, and expenses, as provided in the costs statute for eminent domain proceedings (G.S. 40A-8), and reasonable attorney fees if any of the following applied:

1. The final judgment was that DOT could not acquire the property by condemnation.
2. DOT abandoned the proceeding.
3. The final judgment exceeded the amount of the deposit by 25% or more, including additional deposits made in the 6 months prior to the verdict. Attorney fees awarded under this provision could not exceed one-third of the difference between the judgment award plus interest, and the deposit. In considering what attorneys' fees are reasonable, the judge would be required to consider the extent to which the party has provided to the other party, in advance of the trial, the written appraisal reports of those witnesses testifying at trial.

Section 4: The federal Uniform Relocation Assistance and Real Property Acquisition Policies Act requires relocation notices to be provided to persons displaced by eminent domain actions in certain cases. Section 5 would require the DOT to provide any written notice of relocation required under federal law together with the summons, complaint, declaration of taking and notice of deposit required to be served under G.S. 136-103(d).

This section would become effective October 1, 2015, and apply to condemnation actions filed on or after that date.

EFFECTIVE DATE: Except as otherwise noted, the act would become effective July 1, 2016, and would apply to condemnation actions filed on or after that date.