



HOUSE BILL 127: DOT Condemnation Changes

**This Bill Analysis
reflects the contents
of the bill as it was
presented in
committee.**

2015-2016 General Assembly

Committee:	House Judiciary IV, if favorable, Appropriations	Date:	March 25, 2015
Introduced by:	Reps. Stam, Jackson, Bryan	Prepared by:	Kara McCraw Committee Counsel
Analysis of:	PCS to First Edition H127-CSTC-5[v4]		

SUMMARY: *House Bill 127 would make the following changes: 1) modify the measure of damages for Department of Transportation (DOT) condemnations; 2) provide for interest on a DOT condemnation award from date of taking until judgment is paid; 3) allow defendants to recover attorney fees and costs if judgment exceeds deposit by 25% or more in DOT condemnations; 4) provide that property owners are entitled to compensation for partial control of access in controlled access facilities; and 5) provide that DOT must send any relocation notice required by federal law within a certain time frame.*

The PCS reviewed by the Committee on March 18 removed Section 4 of the bill, which would have reduced to 180 days any delay of a building permit issuance due to the Transportation Corridor Official Map Act.

In addition, the revised PCS for House Bill 127 would:

- In Section 3, authorize reimbursement as provided in a Chapter 40A eminent domain proceeding if certain conditions were met. Would also modify one of those conditions, final judgment exceeding amount of deposit, by including both the initial deposit and any additional deposits made at least 6 months before the verdict in the deposit.*
- In Section 5, by requiring the relocation notice to be provided 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.



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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.

BILL ANALYSIS:

Section 1: Would provide that the damages for takings in a DOT condemnation action would be as provided in G.S. 40A-63 and G.S. 40A-64 which deal with eminent domain. Under those statutes, the determination of the amount of compensation would reflect the value of the property immediately prior to the filing of the complaint, and the date of the filing of the complaint would be the date of valuation of the interest taken.

The measure of compensation for the property would be fair market value, unless the taking was less than the entire tract.

For a taking of less than the entire tract, the measure of compensation would be the greater of either:

- i. The amount by which the fair market value of the entire tract immediately before the taking exceeds the fair market value of the remainder immediately after the taking; or
- ii. The fair market value of the property taken.

The value of removed improvements or fixtures would not be included in the fair market value, but cost of removal would be considered as an element to be compensated

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 July 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.

Section 4: Would clarify that land owners are entitled to compensation for partial control of easements of access by DOT within a controlled-access facility.

Section 5: 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.