

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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SENATE DRS85153-LB-38 (1/23)

Short Title: Eminent Domain.

(Public)

Sponsors: Senator Berger of Rockingham.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ALLOW DIFFERENTIAL TREATMENT OF NONPROFIT ORGANIZATIONS WHOSE PROPERTY IS CONDEMNED SO AS TO ALLOW REPLACEMENT VALUE RATHER THAN FAIR MARKET VALUE.

The General Assembly of North Carolina enacts:

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

**"§ 40A-64. Compensation for taking.**

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

(b) If there is a taking of less than the entire tract, the measure of compensation is 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.

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

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

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

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

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

- 1           (1) The cost of a functionally equivalent site;  
2           (2) The cost of relocating and rehabilitating improvements taken, or if  
3           relocation and rehabilitation is impracticable, the cost of providing  
4           improvements of substantially comparable character and of the same  
5           or equal utility; and  
6           (3) The cost of betterments and enlargements required by law or by  
7           current construction and utilization standards for similar facilities."

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

9           "**§ 136-112. Measure of damages.**

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

- 13           (1) Where only a part of a tract is taken, the measure of damages for said  
14 taking shall be the difference between the fair market value of the  
15 entire tract immediately prior to said taking and the fair market value  
16 of the remainder immediately after said taking, with consideration  
17 being given to any special or general benefits resulting from the  
18 utilization of the part taken for highway purposes.  
19           (2) Where the entire tract is taken the measure of damages for said taking  
20 shall be the fair market value of the property at the time of taking.

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

- 24           (1) The property is devoted to and is needed by the owner in order to  
25 continue in good faith its actual use to perform a public function or to  
26 render nonprofit educational, religious, charitable, or eleemosynary  
27 services; and  
28           (2) The facilities or services are available to the general public.

29          (c) The cost of functional replacement under subsection (b) of this section  
30 includes:

- 31           (1) The cost of a functionally equivalent site;  
32           (2) The cost of relocating and rehabilitating improvements taken, or if  
33           relocation and rehabilitation is impracticable, the cost of providing  
34           improvements of substantially comparable character and of the same  
35           or equal utility; and  
36           (3) The cost of betterments and enlargements required by law or by  
37           current construction and utilization standards for similar facilities."

38          **SECTION 3.** This act is effective when it becomes law.