

# GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2015

## Legislative Fiscal Note

**BILL NUMBER:** House Bill 127 (Second Edition)

**SHORT TITLE:** DOT Condemnation Changes.

**SPONSOR(S):** Representatives Stam, Jackson, and Bryan

<b>FISCAL IMPACT</b>					
(\$ in millions)					
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> No Estimate Available		
<b>State Impact</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>
General Fund Revenues:	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0
General Fund Expenditures:	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0
HTF Revenues:	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0
HTF Expenditures:	\$0.0	Minimal	\$1.0	\$3.7	\$5.2
State Positions:					
<b>NET STATE IMPACT</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$1.0</b>	<b>\$3.7</b>	<b>\$5.2</b>

**PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:** Department of Transportation, Administrative Office of the Courts

**EFFECTIVE DATE:** Varies

**TECHNICAL CONSIDERATIONS:**  
Yes - See Technical Considerations Section

**BILL SUMMARY:**

**Section 1** of the bill amends G.S. 136-112 to eliminate the measure of damage on tracts partly taken to include financial consideration for any special or general benefits resulting from the utilization of the part taken for highway purposes.

**Section 2** of the bill requires interest on the Department of Transportation (DOT) condemnation award to be paid from the date of taking to the date the judgment is paid.

**Section 3** of the bill authorizes the court in a DOT condemnation action to award reasonable attorney fees, appraisal fees, and engineering fees, if final judgment exceeds the amount of the deposit plus any additional deposits made at least six months before the verdict, by 25% or more. Attorneys' fees awarded are not to exceed one-third of the difference between the judgment award, plus interest, and the deposit. The judge will also consider factors determining what attorneys' fees are reasonable.

**Section 4** of the bill requires DOT to provide summons, complaint, declaration of taking, and notice of deposit along with the written notice of relocation, which is required by federal law.

**ASSUMPTIONS AND METHODOLOGY:**

**Section 1:**

Section 1 prohibits the appraiser from considering any increase in per acre value due to a change in valuation of the property being taken for highway purposes. By eliminating any consideration resulting from the benefits obtained, the section is likely to lead to minor reductions in appraised values on partially taken tracts, but the amount is not known.

**Section 2:**

Section 2 expands the amount of time DOT must pay interest from the date of judgment to the date the judgment is paid. This change adds approximately 10 to 30 days to the time DOT will pay interest. The chart below summarizes the impact of Section 2 had this law been in effect when the condemnations occurred. The Department would have paid additional interest ranging from \$170,726 to \$523,887 in FY2014.

<b>Chart One: Interest Accrued if Section 2 in Effect from FY2009-FY2014</b>					
			Additional Interest Accrued		
FY	Number of Judgments	Total Awards Less Deposits	10 Days	20 Days	One Month
FY2014	443	\$68,589,421	\$170,726	\$338,982	\$523,887
FY2013	527	\$67,869,393	\$148,634	\$297,268	\$452,689
FY2012	315	\$49,546,998	\$108,508	\$217,016	\$330,478
FY2011	287	\$36,706,133	\$80,386	\$160,773	\$244,830
FY2010	197	\$19,827,940	\$43,458	\$86,917	\$132,186
FY2009	181	\$22,857,814	\$50,099	\$100,199	\$152,385

Based on Section 2, no fiscal impact is expected until FY 2017 and the impact is expected to be minimal in FY 2017 and represent only consent judgments, not any jury awards. It will take three to four fiscal years for the fiscal impact to be fully realized, which will occur when all settlements or jury verdicts are based on condemnations that include the resulting interest accrual. The fiscal impact from the additional interest accrual is expected to increase in each fiscal year after FY 2017 as more applicable condemnations reach settlement or jury award. It is assumed that the condemnations affected one year after this bill become law will reach jury trial by FY 2019. It is reasonable to assume the impact will be at least \$300,000 by FY 2019.

DOT states “It is anticipated that the number of condemnation claims will increase significantly as a result of the passage of this bill, thereby increasing the expenditures.” This analysis does not address DOT’s concern.

The Administrative Office of the Courts (AOC) does not expect any fiscal impact to the courts from Section 2.

**Section 3:**

Section 3 requires that DOT pay reasonable attorney’s fees, and appraisal and engineering fees as specified in G.S. 40A-8, that were incurred by the property owner if the final judgment in a jury trial exceeds the amount of deposit by 25% or more. The amount of deposit includes deposits

made at least six months before the verdict. Based on 2014 data, 4.4% of condemnations include an amended filing, which results when there is a change in the areas taken or an improvement is determined to have more damages than initially appraised. The monetary difference in the original appraisal and the newer revised appraisal is deposited at the time of the amended filing. DOT did not provide data to determine the fiscal impact resulting from a potentially higher combined deposit amount. Any fiscal impact is expected to be minimal.

Attorney’s fees cannot exceed one-third the difference between the jury award, plus interest, less deposit. According to DOT, all jury verdicts have exceeded the 25% threshold. DOT believes the bill will “reduce any incentive to settle by the property owner or his attorney.”

<b>Chart Two: Cases Filed and % Increase of Award over Deposit</b>							
	Number of Cases Filed			Award Less Deposit		Additional Interest	
FY	Condemnations	Consent Judgement	Jury Verdict	Consent Judgement	Jury Verdict	Consent Judgement	Jury Verdict
FY2014	477	427	16	\$ 62,426,043	\$ 6,163,378	85%	184%
FY2013	510	347	18	\$ 52,115,291	\$ 14,754,102	82%	210%
FY2012	649	298	17	\$ 43,873,646	\$ 5,673,352	90%	175%
FY2011	444	269	18	\$ 30,546,709	\$ 6,159,424	75%	120%
FY2010	488	188	9	\$ 17,364,993	\$ 2,462,947	63%	201%
FY2009	303	169	12	\$ 20,814,197	\$ 2,043,617	105%	124%

DOT believes all FY2014 jury verdicts exceeded the bill’s 25% threshold. Therefore, the analysis assumes all jury trial fees will be paid by DOT in the future once this bill applies to all condemnation proceedings. Based on feedback from several NC attorneys specializing in condemnation, most attorneys charge a contingency fee that ranges from 25% to 33% of the award plus interest less deposit. This bill requires the State to pay legal fees based on the typical attorney practice to base condemnation legal fees on a contingency basis. The property owner will be responsible for any contingency-based legal fees that exceed the amount reimbursed by the State.

Disagreement exists between DOT and attorneys specializing in condemnation as to whether this bill will increase or decrease the number of jury trials. Incurring the additional cost of fees may encourage DOT to increase settlement offers to avoid trial. Some attorneys specializing in condemnation also believe DOT uses internal appraisal staff and contracted appraisers that may generate appraisals lower than other appraisers, or use different methodologies to produce lower damage assessments. This uncertainty makes determining a fiscal impact difficult. A higher initial appraisal will likely encourage more settlements, but the appraisal process is regulated to prevent discrepancies. While the argument may be legitimate, it is anecdotal and has not been proven. In terms of the potential to increase jury trials, it is feasible that some landowners will risk going to trial in order to benefit from the State’s payment of legal, appraisal, and engineering fees. The inclusion of interest as part of the reimbursable allowable expense incurred by the State may also increase costs to the State on a case-by-case basis. The attorney fee contingency plus interest brings more credence to the possibility that property owners will pursue trial in condemnations

involving substantial sums. Given the data in Chart 2, a property owner may reasonably conclude that jury trials produce higher awards than settlements, and that awards predominantly exceed the bill's 25% threshold. This analysis assumes that the arguments that lead to both fewer and more trials will both factor into a property owner's decision whether to settle, whether to hire a lawyer, and whether to go to trial. Given the minimal number of condemnations that end in jury trial, this analysis assumes these factors will cancel each other out and the small number of jury trials will continue.

Chart 3 indicates a fiscal impact of \$1,045,400 in FY2018 and \$4,860,000 in FY 2020 based on attorney fees limited to one-third of the difference between the verdict, plus interest, and the deposit.

Therefore, the fiscal analysis for Section 3, based on the reimbursement rate of one-third of the difference between the judgment award, plus interest, and the deposit, makes the following assumptions:

1. Given the level of percentage increase of the award in existing verdict trials (184% in FY2014), this analysis assumes that all jury award cases will apply to this bill.
2. This analysis does not assume the bill will lead to a decrease or increase in the number of cases going to jury verdict. The number of jury trials is based on an annual average of 20 cases per year by FY2018, prorated to the number that are applicable based on the bill's effective date.
3. The jury award less deposit will range from \$5 million to \$15 million annually, or \$521,388 per case, without interest. These figures represent the average of the last three years of actual data, as presented in Chart 2.
4. This analysis assumes the average time from condemnation to trial is 3 ½ years for the purposes of calculating interest for FY 2020 and prorates the time limits to determine the fiscal impact in FY 2018 and FY 2019.
5. This analysis assumes the time period at which deposit is based for all cases identified in Chart 3 is the bill's effective date.
6. While the bill states the award "may not exceed one-third" of the difference in judgment, plus interest, less deposit, for purposes of this analysis 30% reimbursement is used to calculate attorney fees.
7. Appraisal fees average \$2,500 per case.
8. Engineering fees average \$5,000 and are used in 50% of jury trials.
9. Due to the bill's effective date, it is assumed that 25% of the annualized fiscal impact will be incurred in FY2018 and 75% of the fiscal impact will be felt in FY2019. The full fiscal impact of this bill will occur after FY 2019.
10. DOT states "It is anticipated that the number of condemnation claims will increase significantly as a result of the passage of this bill, thereby increasing the expenditures." This analysis does not address DOT's concern that DOT will be required to condemn more property because property owners may be less likely to settle. If DOT's assertion is correct, it is assumed that 5% of all additional condemnation proceedings will proceed to trial.

<b>Chart Three: Potential Fiscal Impact of Section 3</b>					
	Potential Number of Jury Trials on Condemnations Filed after 1/1/16	Attorney Fees	Appraisal Fees	Engineering Fees	Total
FY2016	0				\$0
FY2017	0				\$0
FY2018	5	\$1,020,400	\$12,500	\$12,500	\$1,045,400
FY2019	15	\$3,306,000	\$37,500	\$37,500	\$3,381,000
FY2020	20	\$4,760,000	\$50,000	\$50,000	\$4,860,000

Noteworthy is the acknowledgement that the payment of interest may be significantly higher than shown in this analysis for cases that span many years. Additionally, cases will exist in which substantial award payments are made. These awards will far exceed the averages used in this analysis and significantly increase the interest payment calculated in the reimbursed attorney expenses. These exceptions are not represented in this fiscal analysis.

AOC does not expect any fiscal impact to the courts from Section 3.

**SOURCES OF DATA:** NC Department of Transportation, Administrative Office of the Courts, NC Bar Association, NC Justice Department, and Attorneys from 1) Cranfill, Sumer & Hartzog, 2) Hansen Law Firm, PLLC, 3) Brooks Pierce, and 4) Manning Fulton.

**TECHNICAL CONSIDERATIONS:** DOT states that “Regarding the Relocation Notice requirements, the Department has concerns that Section Four may establish a conflict with federal requirements regarding relocation and could lead to a loss of funding.”

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**Signed Copy Located in the NCGA Principal Clerk's Offices**