

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1081

Short Title: Condemnation Awards/Evidence.

(Public)

Sponsors: Representatives Allred; Decker, Hardy, Hill, and Smith.

Referred to: Judiciary II, if favorable, Finance.

April 21, 1997

A BILL TO BE ENTITLED

1 AN ACT TO AMEND LAWS GOVERNING CONDEMNATION TO AUTHORIZE
2 AWARD OF ATTORNEYS' FEES AND INTRODUCTION OF ADDITIONAL
3 EVIDENCE OF PROPERTY VALUE IN CERTAIN CONDEMNATION
4 ACTIONS.
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6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 40A-8 is amended by adding a new subsection to read:

8 "(d) In addition to the other costs allowed under this Chapter, in any action brought
9 under Article 3 of this Chapter in which the judgment awarded to the owner is an amount
10 greater than the amount of the deposit under G.S. 40A-41, the court with jurisdiction over
11 the action shall, after making appropriate findings of fact, award each owner of the
12 property sought to be condemned a sum that, in the opinion of the court based upon its
13 findings of fact, will reimburse the owner for reasonable costs, disbursements, and
14 expenses, including reasonable attorneys', appraisal, and engineering fees."

15 Section 2. Article 4 of Chapter 40A of the General Statutes is amended by
16 adding a new section to read:

17 "**§ 40A-71. Evidence of value.**

18 In any proceeding to determine the value of property condemned under Article 3 of
19 this Chapter:

20 (1) The amount deposited pursuant to G.S. 40A-41,

1 (2) The most recent appraisal and valuation done prior to institution of the
2 action pursuant to G.S. 40A-41 for the purpose of levying ad valorem
3 taxes upon the property condemned, or
4 (3) Any other evidence of value of the property deemed relevant by the
5 court,
6 shall be produced upon motion of any party to the proceeding and shall be admissible
7 into evidence."

8 Section 3. G.S. 40A-48(d) reads as rewritten:

9 "(d) A copy of the report shall at the time of filing be mailed certified or registered
10 mail by the clerk to each of the parties or to their counsel of record. Within 30 days after
11 the mailing of the report, either the condemnor or the owner, may except thereto and
12 demand a trial de novo by a jury as to the issue of compensation. Upon the receipt of
13 such demand the action shall be placed on the civil issue docket of the superior court for
14 trial de novo by a jury as to the issue of compensation, provided, that upon agreement of
15 both parties trial by jury may be waived and the issue determined by the judge. The
16 report of commissioners shall not be competent as evidence upon the trial of the issue of
17 compensation in the superior court, ~~nor shall evidence of the deposit by the condemnor into~~
18 ~~the court be competent upon the trial of the issue of compensation.~~ court. If no exception to the
19 report of commissioners is filed within the time prescribed, final judgment shall be
20 entered by the judge upon a determination and finding by him that the report of
21 commissioners plus interest computed in accordance with G.S. 40A-53 of this Chapter,
22 awards to the property owners just compensation. In the event that the judge is of the
23 opinion and, in his discretion, determines that the award does not provide just
24 compensation, he shall set aside the award and order the case placed on the civil issue
25 docket for determination of the issue of compensation by a jury."

26 Section 4. G.S. 136-119 reads as rewritten:

27 "**§ 136-119. Costs and appeal.**

28 (a) The Department of Transportation shall pay all court costs taxed by the court.
29 Either party shall have a right of appeal to the Supreme Court for errors of law committed
30 in any proceedings provided for in this Article in the same manner as in any other civil
31 actions and it shall not be necessary that an appeal bond be posted.

32 The court having jurisdiction of the condemnation action instituted by the Department
33 of Transportation to acquire real property by condemnation shall award the owner of any
34 right, or title to, or interest in, such real property such sum as will in the opinion of the
35 court reimburse such owner for his reasonable cost, disbursements, and expenses,
36 including reasonable attorney fees, appraisal, and engineering fees, actually incurred
37 because of the condemnation proceedings, if (i) the final judgment is that the Department
38 of Transportation cannot acquire real property by condemnation; or (ii) the proceeding is
39 abandoned by the Department of Transportation.

40 The judge rendering a judgment for the plaintiff in a proceeding brought under G.S.
41 136-111 awarding compensation for the taking of property, shall determine and award or
42 allow to such plaintiff, as a part of such judgment, such sum as will in the opinion of the
43 judge reimburse such plaintiff for his reasonable cost, disbursements and expenses,

1 including reasonable attorney, appraisal, and engineering fees, actually incurred because
2 of such proceeding.

3 (b) In addition to the other costs allowed under this Article, in any action brought
4 under this Article in which the judgment awarded to the owner is an amount greater than
5 the amount of the deposit under G.S. 136-103, the court with jurisdiction over the action
6 shall, after making appropriate findings of fact, award each owner of the property sought
7 to be condemned a sum that, in the opinion of the court based upon its findings of fact,
8 will reimburse the owner for reasonable costs, disbursements, and expenses, including
9 reasonable attorneys', appraisal, and engineering fees."

10 Section 5. Article 9 of Chapter 136 of the General Statutes is amended by
11 adding a new section to read:

12 **"§ 136-121.2. Evidence of value.**

13 In any proceeding to determine the value of property condemned under Article 3 of
14 this Chapter:

- 15 (1) The amount deposited pursuant to G.S. 136-103,
16 (2) The most recent appraisal and valuation done prior to institution of the
17 action pursuant to this Article for the purpose of levying ad valorem
18 taxes upon the property condemned, or
19 (3) Any other evidence of value of the property deemed relevant by the
20 court,

21 shall be produced upon motion of any party to the proceeding and shall be admissible
22 into evidence."

23 Section 6. G.S. 136-109(d) reads as rewritten:

24 "(d) A copy of the report shall at the time of filing be mailed to each of the
25 parties. Within 30 days after the filing of the report, either the Department of
26 Transportation or the owner, may except thereto and demand a trial de novo by a jury as
27 to the issue of damages. Whereupon the action shall be placed on the civil issue docket of
28 the superior court for trial de novo by a jury as to the issue of damages, provided, that
29 upon agreement of both parties trial by jury may be waived and the issue determined by
30 the judge. The report of commissioners shall not be competent as evidence upon the trial
31 of the issue of damages in the superior court, ~~nor shall evidence of the deposit by the~~
32 ~~Department of Transportation into the court be competent upon the trial of the issue of damages.~~
33 court. If no exception to the report of commissioners is filed within the time prescribed
34 final judgment shall be entered by the judge upon a determination and finding by him that
35 the report of commissioners, plus interest computed in accordance with G.S. 136-113 of
36 this Chapter, awards to the property owners just compensation. In the event that the judge
37 is of the opinion and, in his discretion, determines that such award does not provide just
38 compensation he shall set aside said award and order the case placed on the civil issue
39 docket for determination of the issue of damages by a jury."

40 Section 7. This act becomes effective October 1, 1997, and applies to pending
41 litigation.