

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 1270

Short Title: DOT Condemnation Procedures.

(Public)

Sponsors: Senators Kinnaird; and Jenkins.

Referred to: Judiciary.

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO MODIFY DEPARTMENT OF TRANSPORTATION CONDEMNATION PROCEDURES.

The General Assembly of North Carolina enacts:

PART I. DEPARTMENT OF TRANSPORTATION TO PAY ATTORNEYS' FEES IN CONDEMNATION ACTIONS.

Section 1. G.S. 136-119 reads as rewritten:

"§ 136-119. Costs and appeal.

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

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

1 The judge rendering a judgment for the plaintiff in a proceeding brought under G.S.
2 136-111 awarding compensation for the taking of property, shall determine and award or
3 allow to such plaintiff, as a part of such judgment, such sum as will in the opinion of the
4 judge reimburse such plaintiff for his reasonable cost, disbursements and expenses,
5 including reasonable attorney, appraisal, and engineering fees, actually incurred because
6 of such proceeding.

7 (b) In addition to the other costs allowed under this Article, in any action brought
8 under this Article in which the judgment, including a consent judgment, awarded to the
9 owner exceeds the amount of the deposit under G.S. 136-103 by at least seven hundred
10 dollars (\$700.00) and at least twenty percent (20%), the court with jurisdiction over the
11 action may, after making appropriate findings of fact, award each owner of the
12 condemned property a sum that, in the opinion of the court based upon its findings of
13 fact, will reimburse the owner for reasonable costs, disbursements, and expenses,
14 including reasonable attorneys', appraisal, and engineering fees, in such amounts as the
15 court shall in its discretion determine and allow."

16 PART II. DEPARTMENT OF TRANSPORTATION CONDEMNATION
17 VALUATIONS.

18 Section 2. G.S. 136-112 reads as rewritten:

19 "**§ 136-112. Measure of damages.**

20 The following shall be the measure of damages to be followed by the Department of
21 Transportation, the commissioners, ~~jury or judge~~ the jury, or the judge who determines the
22 issue of damages:

- 23 (1) Where only a part of a tract is taken, the measure of damages for ~~said~~
24 the taking shall be the difference between the fair market value of the
25 entire tract immediately prior to ~~said~~ the taking and the fair market value
26 of the remainder immediately after ~~said taking, with consideration being~~
27 ~~given to any special or general benefits resulting from the utilization of the~~
28 ~~part taken for highway purposes.~~ the taking.
29 (2) Where the entire tract is taken the measure of damages for ~~said~~ the
30 taking shall be the fair market value of the property at the time of
31 taking."

32 PART III. CONGESTION MITIGATION.

33 Section 3. Chapter 136 of the General Statutes is amended by adding a new
34 Article to read:

35 "**ARTICLE 9A.**

36 "**CONGESTION MITIGATION.**

37 "**§ 136-121.11. Preservation and mitigation of uncongested highways.**

38 (a) When planning a new highway, the Department shall survey the land near the
39 highway and determine those areas likely to be developed in such a manner as to unduly
40 burden the highway with congestion.

41 (b) The Department shall survey the land immediately adjacent to the highway and
42 all other affected land that may be developed as a result of the construction of the
43 highway and shall evaluate and address:

1 (1) The need for open space easements to forestall congestion in all
2 environmental documents prepared pursuant to State law or Federal
3 Environmental Policy Acts.

4 (2) All roads being considered for a bypass.

5 (c) The Department of Transportation may condemn land, using the procedures
6 contained in Article 9 of this Chapter, for open space easements when the taking of that
7 land would mitigate the expected congestion on the new highway and forestall the need
8 for widening the highway or construction of a bypass."

9 PART IV. ABANDONED RAIL CORRIDOR ACQUISITION.

10 Section 4. G.S. 136-44.36B reads as rewritten:

11 "**§ 136-44.36B. Power of Department to preserve and acquire railroad corridors.**

12 (a) In exercising its power to preserve railroad corridors, the Department of
13 Transportation-Transportation:

14 (1) ~~may~~ May acquire property for new railroad ~~corridors~~ corridors or

15 (2) ~~and may~~ Shall acquire property that is or has been part of a railroad
16 corridor

17 by purchase, gift, condemnation, or other ~~method~~ method.

18 (b) The acquisition of abandoned railroad corridors shall be made unless there is a
19 showing by clear, cogent, and convincing evidence that the acquisition would not serve
20 the public interest.

21 ~~provided that the~~ (c) The Department may not condemn part of an existing, active
22 railroad line.

23 (d) The procedures in Article 9 of this Chapter apply when the Department
24 condemns property to preserve or acquire a railroad corridor."

25 PART V. EFFECTIVE DATE.

26 Section 5. This act becomes effective July 1, 1999.