

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1081 (PCSRG-001)
SHORT TITLE: Condemnation Award/Evidence
SPONSOR(S): Proposed Committee Substitute

FISCAL IMPACT

Yes () No () No Estimate Available (X)

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

GENERAL FUND	No Estimate Available
HIGHWAY FUND	No Estimate Available
HIGHWAY TRUST FUND	No Estimate Available
LOCAL GOVERNMENTS	No Estimate Available

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Department of Administration
Department of Transportation
Local Governments

EFFECTIVE DATE: October 1, 1997, for actions commenced on or after that date.

BILL SUMMARY: Amends GS 40A-8 and GS 136-119 to provide that in condemnation actions by: 1) private and local public condemnors, 2) the Department of Transportation, and 3) by reference all State agencies (G.S. 146-24(c)), if the judgment awarded the property owner is greater than the deposit made by the condemnor, the court may award the owner reasonable costs of the action, including attorney's fees, and appraisal and engineering fees. Also, amends GS 40A-71 and GS 136-121.2 to provide that in a condemnation action by the aforementioned condemnors the amount deposited by the condemnor shall be admissible as evidence of the value of the property.

ASSUMPTIONS AND METHODOLOGY: The provisions of the proposed act will affect the expenditure requirements of State agencies and local governments in several ways. Allowing the award of attorney's fees to property owners in cases where the property owners receive a judgment greater than the condemnor's deposit may increase the cost to State agencies and local governments of taking condemnation actions to trial. Most owners who take condemnation actions to trial under current law do win judgments greater than the condemnor's deposit, and condemnors would be required to pay fees in these cases, a cost they do not now incur. Also, some owners facing condemnation do not take their cases to trial because of the expense of

attorney's fees. Removing this burden that prevents some owners from taking a condemnation action to trial should increase the number of owners who will allow a condemnation action to go to trial rather than attempt to negotiate a pre-trial settlement. The extent to which the provision affects the number of owners taking cases to trial will depend upon how often judges use their discretion to award attorneys fees. If fees are awarded in most cases, the number of condemnation cases taken to trial should increase. If fees are awarded more selectively, such as in cases where the condemnor has negotiated in bad faith, then the provision may not have a great effect on the number of cases taken to trial.

Allowing the condemnor's deposit to be introduced as evidence in a trial also should encourage owners to take condemnations to trial. If the deposit made by the condemnor is known by the jury, it is very likely that the judgment will exceed the deposit. Given that most owners who currently take a condemnation action to trial receive an award greater than the agency deposit, when the deposit amount is not known, almost all owners are likely to receive an award greater than the deposit under the proposed act. As a result, attorney's fees should be awarded in almost all cases, further increasing the incentive for owners to take a condemnation action to trial.

If more cases go to trial, costs of condemnation will increase for State agencies and local governments. Increased numbers of condemnation cases in the courts would also increase the resource requirements of the civil judicial system.

Any increased incentive for owners to take cases to trial based on the awarding of attorney's fees, and the greater likelihood that judgments will favor owners, also should affect the behavior of State agencies and local governments. Agencies will have greater incentive to acquire property without resorting to condemnation, or of avoiding going to trial when condemnation must be pursued. The desire to avoid these steps should result in higher initial settlement offers. Acceptance of these offers by owners who would have accepted a lower initial offer under current law will result in an increase in property acquisition costs. On the other hand, acceptance of these offers by owners who would have pursued litigation under current law could result in lower property acquisition costs if the increased cost of the settlement is lower than the costs of litigation would have been.

Because the behavior of property owners and condemnors in response to the new legal conditions imposed by the proposed act can be predicted only in broad terms, the effect of these changes in behavior on the costs of property acquisition to State agencies and local governments can not be predicted accurately enough to provide a fiscal estimate of the effect of the proposed act.

TECHNICAL CONSIDERATIONS: None.

FISCAL RESEARCH DIVISION 733-4910 DATE: June 9, 1997
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