

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: House Bill 652 (First Edition)

SHORT TITLE: Property Owners Protection Act.

SPONSOR(S): Representatives Brubaker, McComas, Brawley, and Moffitt

<b>FISCAL IMPACT</b>					
	<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2011-12</u></b>	<b><u>FY 2012-13</u></b>	<b><u>FY 2013-14</u></b>	<b><u>FY 2014-15</u></b>	<b><u>FY 2015-16</u></b>
<b>REVENUES</b>	<i>*See Assumptions and Methodology*</i>				
<b>EXPENDITURES</b>	<i>*See Assumptions and Methodology*</i>				
<b>POSITIONS (cumulative):</b>	<i>*See Assumptions and Methodology*</i>				
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Judicial Branch					
<b>EFFECTIVE DATE:</b> October 1, 2011					

**BILL SUMMARY:**

The proposed legislation enacts new Chapter 47I to the General Statutes, titled the Property Owners Protection Act. The act states that it is the policy of North Carolina that all statutes, ordinances, rules, and regulations affecting the free use of land will be strictly construed against the government and liberally construed in favor of the free use of land. The act directs the court to award to the property owner the attorneys' fees incurred by the property owner, when the owner successfully challenges the construction, interpretation, or enforcement of a statute, ordinance, rule, or regulation that impairs the free use of land. Also, the act directs the court to award attorneys' fees incurred by the owner when the property owner or other person entitled to claim a common law vested right to complete a development project files a cause of action to establish the vested right, and the court finds that the applicable governmental unit failed to fairly investigate or provide an inexpensive means to establish the vested right. The proposed legislation prohibits the State, State agency, or local government from enforcing a penalty, fine, or forfeiture against a property owner for an act the owner did not commit in any matter involving a land use statute, ordinance, rule, or regulation.

In addition, the act enacts new G.S. 153A-348.1 and G.S. 160A-394.1 to apply G.S. Chapter 47I to counties and cities, respectively. The act makes conforming and clarifying changes to G.S. 160A-385, which pertains to changes made to municipal zoning ordinances. The act becomes effective October 1, 2011.

*SOURCE: BILL DIGEST H.B. 652 (04/06/201)*

**ASSUMPTIONS AND METHODOLOGY:**

According to the Administrative Office of the Courts (AOC), data does not show how many superior court civil filings arising from writs of certiorari, appealed from local Boards of Adjustment, occurred in an average year. It is likely that more filings will arise after the passage of the proposed legislation, since more rulings are likely to be in favor of property owners and these individuals will be awarded attorneys' fees. It is possible that new and existing cases will have slightly longer hearings, to allow for a decision on attorneys' fees. AOC has no data upon which to estimate the number of additional cases that may impact workload.

For each of these reviews, AOC estimates that the monetary value of each case would be approximately \$353, for superior court judge and deputy clerk resources.

Each case would be accompanied with a \$160 civil superior court filing fee. From this fee, the General Fund receives \$125.40 per case. The table below contains detail on this fee.

<b>Superior Court Civil Filing Fee</b>			
<b>Fee:</b>	<b>Revenue to:</b>	<b>Filing Fee per case:</b>	<b>Amount to General Fund:</b>
General Court of Justice	General Fund	\$122	\$122.00
	State Bar*	\$3	\$0.30
Phone	Court System	\$4	--
Facilities	Local Government*	\$16	\$1.60
Service of Civil Process	Local Government*	\$15	\$1.50
Collection Assistance Fee	General Fund*	*	
<b>TOTAL</b>		<b>\$160</b>	<b>\$125.40</b>

\*Ten percent (10%) of the State Bar, Facilities, and Process Served fee is remitted to the General Fund as a collection assistance fee.

Because of indigency cases, it is reasonable to assume that less than 100 percent of the applicable fees will be collected. There is no available data to estimate the percentage of cases that will be considered indigent for purposes of fee collection.

**SOURCES OF DATA:** Judicial Branch

**TECHNICAL CONSIDERATIONS:** None

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**DATE:** May 31, 2011



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