

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: House Bill 960 (First Edition)

SHORT TITLE: Protect Homeowners With Underwater Mortgages.

SPONSOR(S): Representatives Brawley, Moffitt, and R. Moore

FISCAL IMPACT					
	Yes ()	No ()	No Estimate Available (X)		
	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>	<u>FY 2016-17</u>
REVENUES					
Highway and Highway Trust Funds			ESTIMATE CANNOT BE DETERMINED See Assumptions and Methodology		
EXPENDITURES					
POSITIONS (cumulative):		0			
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation					
EFFECTIVE DATE: When it becomes law, expiring July 1, 2014.					

BILL SUMMARY:

This bill amends G.S. 136-112 (measure of damages in condemnation action) in two ways: 1) to provide just compensation to property owners with mortgage debt that exceeds the fair market value of the property by authorizing the consideration of outstanding mortgage debt when determining damages in a condemnation action, and 2) to provide that (b) (new provision concerning when condemned property has mortgage debt exceeding fair market value) applies to the condemnation of an owner’s principal residence.

This bill permits the outstanding balance of an eligible mortgage, which must have been executed before July 1, 2008, to be added to the amount of damages and requires the property owner to show that the property’s fair market value declined solely due to market decline.

This bill defines an eligible mortgage to include only a debt secured by a mortgage or deed of trust executed before July 1, 2008, that identifies the property being condemned as collateral (was, to obtain money for the purchase of the property being condemned).

ASSUMPTIONS AND METHODOLOGY:

In a typical year, less than one percent of property acquisitions end in condemnation by a trial verdict. This bill does not impact underwater mortgages on property in which the homeowner settles with the Department. In reviewing condemnation actions that went to trial verdict since 2006, the Department identified one non-residential underwater mortgage that was not remedied, totaling a difference of \$482,600 between the settlement amount and total liens.

A fiscal impact cannot be determined, however, due to the minimal number of condemnation proceedings, the impact is expected to be minimal. This bill may encourage more property owners with underwater mortgages not to settle with DOT, thereby requiring condemnation by a trial verdict in order to qualify for this relief.

SOURCES OF DATA: Department of Transportation

TECHNICAL CONSIDERATIONS:

1. The Department of Transportation (DOT) believes this bill violates the Federal Uniform Acquisition and Relocation Act (URA) of 1970. As a result, federal funds for impacted projects may be at risk. DOT believes violation of the URA may result in the loss of all federal transportation funds.
2. DOT secured a Negative Equity Temporary Waiver from the Federal Highway Administration valid through December 31, 2012, and plans to file a request for an extension. This waiver is used on acquisition properties where the homeowner is up to date on mortgage payments, but the mortgage or other liens exceed the property’s market value. The waiver enables DOT to offer a replacement housing payment in addition to the administrative settlement (the difference between the Just Compensation Offer and the Agreement Amount, including the “underwater” portion of the property owner’s debt). The waiver applies to acquisition properties purchased, either wholly or in part, with federal funds. According to DOT, this bill negates the purpose of the Negative Equity Waiver since it is limited to condemnations that go to trial verdict and excludes settlement acquisitions.
3. According to DOT, the use of the term “damages” in this bill is not synonymous with the appraisals practices for the right of way program administered on state highway projects.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Amna Cameron

APPROVED BY:

Mark Trogdon, Acting Director

Fiscal Research Division

DATE: June 11, 2012



Signed Copy Located in the NCGA Principal Clerk's Offices