

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE DRS65413-LB-230 (10/10)

Short Title: Restrict Eminent Domain. (Public)

Sponsors: Senators Boseman, and Snow.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT ALL EMINENT DOMAIN MUST BE AUTHORIZED
BY GENERAL LAW, AND TO REPEAL AUTHORIZATION OF
CONDEMNATION AUTHORITY FOR URBAN REDEVELOPMENT.

Whereas, the ruling of the United States Supreme Court in the case of Kelo v. City of New London has been viewed as expanding the authorization on the use of the power of eminent domain granted by the State to local governments and other entities; and

Whereas, in North Carolina there is general law relating to the power of eminent domain exercised by cities, counties, and other units of local government, but there is also a plethora of city charter provisions and uncodified local acts that touch on the subject; and

Whereas, North Carolina currently allows condemnation for urban redevelopment purposes; and

Whereas, the General Assembly intends that all purposes for eminent domain must be authorized by general law; Now, therefore,
The General Assembly of North Carolina enacts:

SECTION 1. G.S. 40A-3 is amended by adding a new subsection to read:

"(d) Notwithstanding any other provision of law or any local act, no private condemnor or local public condemnor may exercise the power of eminent domain for any purpose not authorized by this section. This subsection does not affect any local acts setting out different procedures for eminent domain if the purpose is authorized by this section."

SECTION 2. G.S. 40A-3(c)(7), authorizing eminent domain to be exercised under the Urban Redevelopment law, is repealed.

SECTION 3. G.S. 40A-3(b) reads as rewritten:

1 "(b) Local Public Condemnors – Standard Provision. – For the public use or
2 benefit, the governing body of each municipality or county shall possess the power of
3 eminent domain and may acquire by purchase, gift or condemnation any property, either
4 inside or outside its boundaries, for the following purposes.

5 (1) Opening, widening, extending, or improving roads, streets, alleys, and
6 sidewalks. The authority contained in this subsection is in addition to
7 the authority to acquire rights-of-way for streets, sidewalks and
8 highways under Article 9 of Chapter 136. The provisions of this
9 subdivision (1) shall not apply to counties.

10 (2) Establishing, extending, enlarging, or improving any of the public
11 enterprises listed in G.S. 160A-311 for cities, or G.S. 153A-274 for
12 counties.

13 (3) Establishing, enlarging, or improving parks, playgrounds, and other
14 recreational facilities.

15 (4) Establishing, extending, enlarging, or improving storm sewer and
16 drainage systems and works, or sewer and septic tank lines and
17 systems.

18 (5) Establishing, enlarging, or improving hospital facilities, cemeteries, or
19 library facilities.

20 (6) Constructing, enlarging, or improving city halls, fire stations, office
21 buildings, courthouse jails and other buildings for use by any
22 department, board, commission or agency.

23 (7) Establishing drainage programs and programs to prevent obstructions
24 to the natural flow of streams, creeks and natural water channels or
25 improving drainage facilities. The authority contained in this
26 subdivision is in addition to any authority contained in Chapter 156.

27 (8) Acquiring designated historic properties, designated as such before
28 October 1, 1989, or acquiring a designated landmark designated as
29 such on or after October 1, 1989, for which an application has been
30 made for a certificate of appropriateness for demolition, in pursuance
31 of the purposes of G.S. 160A-399.3, Chapter 160A, Article 19, Part
32 3B, effective until October 1, 1989, or G.S. 160A-400.14, whichever is
33 appropriate.

34 (9) Opening, widening, extending, or improving public wharves.

35 The board of education of any municipality or county or a combined board may
36 exercise the power of eminent domain under this Chapter for purposes authorized by
37 ~~other statutes.~~ Chapter 115C of the General Statutes.

38 The power of eminent domain shall be exercised by local public condemnors under
39 the procedures of Article 3 of this Chapter."

40 **SECTION 4.** G.S. 40A-3(b1) reads as rewritten:

41 "(b1) Local Public Condemnors – Modified Provision for Certain Localities. – For
42 the public use or benefit, the governing body of each municipality or county shall
43 possess the power of eminent domain and may acquire by purchase, gift or

1 condemnation any property or interest therein, either inside or outside its boundaries, for
2 the following purposes.

- 3 (1) Opening, widening, extending, or improving roads, streets, alleys, and
4 sidewalks. The authority contained in this subsection is in addition to
5 the authority to acquire rights-of-way for streets, sidewalks and
6 highways under Article 9 of Chapter 136. The provisions of this
7 subdivision (1) shall not apply to counties.
- 8 (2) Establishing, extending, enlarging, or improving any of the public
9 enterprises listed in G.S. 160A-311 for cities, or G.S. 153A-274 for
10 counties.
- 11 (3) Establishing, enlarging, or improving parks, playgrounds, and other
12 recreational facilities.
- 13 (4) Establishing, extending, enlarging, or improving storm sewer and
14 drainage systems and works, or sewer and septic tank lines and
15 systems.
- 16 (5) Establishing, enlarging, or improving hospital facilities, cemeteries, or
17 library facilities.
- 18 (6) Constructing, enlarging, or improving city halls, fire stations, office
19 buildings, courthouse jails and other buildings for use by any
20 department, board, commission or agency.
- 21 (7) Establishing drainage programs and programs to prevent obstructions
22 to the natural flow of streams, creeks and natural water channels or
23 improving drainage facilities. The authority contained in this
24 subdivision is in addition to any authority contained in Chapter 156.
- 25 (8) Acquiring designated historic properties, designated as such before
26 October 1, 1989, or acquiring a designated landmark designated as
27 such on or after October 1, 1989, for which an application has been
28 made for a certificate of appropriateness for demolition, in pursuance
29 of the purposes of G.S. 160A-399.3, Chapter 160A, Article 19, Part
30 3B, effective until October 1, 1989, or G.S. 160A-400.14, whichever is
31 appropriate.
- 32 (9) Opening, widening, extending, or improving public wharves.
- 33 (10) Engaging in or participating with other governmental entities in
34 acquiring, constructing, reconstructing, extending, or otherwise
35 building or improving beach erosion control or flood and hurricane
36 protection works, including, but not limited to, the acquisition of any
37 property that may be required as a source for beach renourishment.
- 38 (11) Establishing access for the public to public trust beaches and
39 appurtenant parking areas.

40 The board of education of any municipality or county or a combined board may
41 exercise the power of eminent domain under this Chapter for purposes authorized by
42 ~~other statutes.~~ Chapter 115C of the General Statutes.

43 The power of eminent domain shall be exercised by local public condemnors under
44 the procedures of Article 3 of this chapter.

1 This subsection applies only to Carteret and Dare Counties, the Towns of Atlantic
2 Beach, Carolina Beach, Caswell Beach, Emerald Isle, Holden Beach, Indian Beach, Kill
3 Devil Hills, Kitty Hawk, Kure Beach, Nags Head, North Topsail Beach, Oak Island,
4 Ocean Isle Beach, Pine Knoll Shores, Sunset Beach, Surf City, Topsail Beach, and
5 Wrightsville Beach, and the Village of Bald Head Island."

6 **SECTION 5.** This act is effective when it becomes law.