

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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SENATE BILL 1321

Short Title: Restrict Eminent Domain. (Public)

Sponsors: Senators Boseman and Snow.

Referred to: Rules and Operations of the Senate.

May 15, 2006

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 G.S. 40A-3(c)(7), authorizing eminent domain to be exercised under the Urban Redevelopment law, is repealed.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

"(b) Local Public Condemnors – Standard Provision. – For the public use or benefit, the governing body of each municipality or county shall possess the power of

1 eminent domain and may acquire by purchase, gift or condemnation any property, either
2 inside or outside its boundaries, for 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 The board of education of any municipality or county or a combined board may
34 exercise the power of eminent domain under this Chapter for purposes authorized by
35 ~~other statutes.~~ Chapter 115C of the General Statutes.

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

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

39 "(b1) Local Public Condemnors – Modified Provision for Certain Localities. – For
40 the public use or benefit, the governing body of each municipality or county shall
41 possess the power of eminent domain and may acquire by purchase, gift or
42 condemnation any property or interest therein, either inside or outside its boundaries, for
43 the following purposes.

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

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

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

43 This subsection applies only to Carteret and Dare Counties, the Towns of Atlantic
44 Beach, Carolina Beach, Caswell Beach, Emerald Isle, Holden Beach, Indian Beach, Kill

1 Devil Hills, Kitty Hawk, Kure Beach, Nags Head, North Topsail Beach, Oak Island,
2 Ocean Isle Beach, Pine Knoll Shores, Sunset Beach, Surf City, Topsail Beach, and
3 Wrightsville Beach, and the Village of Bald Head Island."

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