

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2005**

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**HOUSE DRH50542-RLz-12 (05/08)**

Short Title: Eminent Domain Restrictions.

(Public)

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Sponsors: Representatives Goforth and Sherrill (Primary Sponsors).

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Referred to:

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A BILL TO BE ENTITLED

AN ACT TO RESTRICT THE STATUTORY PURPOSES FOR WHICH EMINENT DOMAIN MAY BE USED BY PRIVATE CONDEMNORS, LOCAL PUBLIC CONDEMNORS, AND OTHER PUBLIC CONDEMNORS, AND FOR CERTAIN REVENUE BOND PROJECTS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON EMINENT DOMAIN POWERS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 40A-1 reads as rewritten:

**"§ 40A-1. Exclusive provisions.**

(a) Notwithstanding the provisions of any local act, it is the intent of the General Assembly that, effective July 1, 2006, the uses set out in G.S. 40A-3 are the exclusive uses for which the authority to exercise the power of eminent domain is granted to private condemnors, local public condemnors, and other public condemnors. Effective July 1, 2006, any local act granting the authority to exercise the power of eminent domain to a private condemnor, local public condemnor, or other public condemnor for a use or purpose other than those granted to it in G.S. 40A-3 is repealed. Provided that, any eminent domain action commenced before July 1, 2006, for a use or purpose granted in a local act, may be lawfully completed pursuant to the provisions of that local act. The provisions of this subsection shall not repeal any provision of a local act limiting the purposes for which the authority to exercise the power of eminent domain may be used.

(b) It is the intent of the General Assembly that the procedures provided by this Chapter shall be the exclusive condemnation procedures to be used in this State by all private condemnors and all local public condemnors. All other provisions in laws, charters, or local acts authorizing the use of other procedures by municipal or county governments or agencies or political subdivisions thereof, or by corporations, associations or other persons are hereby repealed effective January 1, 1982. Provided,

1 that any condemnation proceeding initiated prior to January 1, 1982, may be lawfully  
2 completed pursuant to the provisions previously existing.

3 (c) This chapter shall not repeal any provision of a local act ~~enlarging or limiting~~  
4 the purposes for which property may be condemned. Notwithstanding the language of  
5 G.S. 40A-3(b), this Chapter also shall not repeal any provision of a local act creating  
6 any substantive or procedural requirement or limitation on the authority of a local public  
7 condemnor to exercise the power of eminent domain outside of its boundaries."

8 **SECTION 2.** G.S. 40A-3 reads as rewritten:

9 **"§ 40A-3. By whom right may be exercised.**

10 (a) Private Condemnors. – For the public use or benefit, the persons or  
11 organizations listed below shall have the power of eminent domain and may acquire by  
12 purchase or condemnation property for the stated purposes and other works which are  
13 authorized by law.

14 (1) Corporations, bodies politic or persons have the power of eminent  
15 domain for the construction of railroads, power generating facilities,  
16 substations, switching stations, microwave towers, roads, alleys,  
17 access railroads, turnpikes, street railroads, plank roads, tramroads,  
18 canals, telegraphs, telephones, electric power lines, electric lights,  
19 public water supplies, public sewerage systems, flumes, bridges, and  
20 pipelines or mains originating in North Carolina for the transportation  
21 of petroleum products, coal, gas, limestone or minerals. Land  
22 condemned for any liquid pipelines shall:

23 a. Not be less than 50 feet nor more than 100 feet in width; and

24 b. Comply with the provisions of G.S. 62-190(b).

25 The width of land condemned for any natural gas pipelines shall not be  
26 more than 100 feet.

27 (2) School committees or boards of trustees or of directors of any  
28 corporation holding title to real estate upon which any private  
29 educational institution is situated, have the power of eminent domain  
30 in order to obtain a pure and adequate water supply for such  
31 institution.

32 (3) Franchised motor vehicle carriers or union bus station companies  
33 organized by authority of the Utilities Commission, have the power of  
34 eminent domain for the purpose of constructing and operating union  
35 bus stations: Provided, that this subdivision shall not apply to any city  
36 or town having a population of less than 60,000.

37 (4) Any railroad company has the power of eminent domain for the  
38 purposes of: constructing union depots; maintaining, operating,  
39 improving or straightening lines or of altering its location; constructing  
40 double tracks; constructing and maintaining new yards and terminal  
41 facilities or enlarging its yard or terminal facilities; connecting two of  
42 its lines already in operation not more than six miles apart; or  
43 constructing an industrial siding.

1           (5) A condemnation in fee simple by a State-owned railroad company for  
2           the purposes specified in subdivision (4) of this subsection and as  
3           provided under G.S. 124-12(2).

4           The width of land condemned for any single or double track railroad purpose shall  
5           be not less than 80 feet nor more than 100 feet, except where the road may run through  
6           a town, where it may be of less width, or where there may be deep cuts or high  
7           embankments, where it may be of greater width.

8           No rights granted or acquired under this subsection shall in any way destroy or  
9           abridge the rights of the State to regulate or control any railroad company or to regulate  
10          foreign corporations doing business in this State. Whenever it is necessary for any  
11          railroad company doing business in this State to cross the street or streets in a town or  
12          city in order to carry out the orders of the Utilities Commission, to construct an  
13          industrial siding, the power is hereby conferred upon such railroad company to occupy  
14          such street or streets of any such town or city within the State. Provided, license so to do  
15          be first obtained from the board of aldermen, board of commissioners, or other  
16          governing authorities of such town or city.

17          No such condemnor shall be allowed to have condemned to its use, without the  
18          consent of the owner, his burial ground, usual dwelling house and yard, kitchen and  
19          garden, unless condemnation of such property is expressly authorized by statute.

20          The power of eminent domain shall be exercised by private condemnors under the  
21          procedures of Article 2 of this Chapter.

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

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

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

34           (3) Establishing, enlarging, or improving parks, playgrounds, and other  
35           recreational facilities.

36           (4) Establishing, extending, enlarging, or improving storm sewer and  
37           drainage systems and works, or sewer and septic tank lines and  
38           systems.

39           (5) Establishing, enlarging, or improving hospital facilities, cemeteries, or  
40           library facilities.

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

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

5 (8) Acquiring designated historic properties, designated as such before  
6 October 1, 1989, or acquiring a designated landmark designated as  
7 such on or after October 1, 1989, for which an application has been  
8 made for a certificate of appropriateness for demolition, in pursuance  
9 of the purposes of G.S. 160A-399.3, Chapter 160A, Article 19, Part  
10 3B, effective until October 1, 1989, or G.S. 160A-400.14, whichever is  
11 appropriate.

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

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

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

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

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

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

31 (3) Establishing, enlarging, or improving parks, playgrounds, and other  
32 recreational facilities.

33 (4) Establishing, extending, enlarging, or improving storm sewer and  
34 drainage systems and works, or sewer and septic tank lines and  
35 systems.

36 (5) Establishing, enlarging, or improving hospital facilities, cemeteries, or  
37 library facilities.

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

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

- 1 (8) Acquiring designated historic properties, designated as such before  
2 October 1, 1989, or acquiring a designated landmark designated as  
3 such on or after October 1, 1989, for which an application has been  
4 made for a certificate of appropriateness for demolition, in pursuance  
5 of the purposes of G.S. 160A-399.3, Chapter 160A, Article 19, Part  
6 3B, effective until October 1, 1989, or G.S. 160A-400.14, whichever is  
7 appropriate.
- 8 (9) Opening, widening, extending, or improving public wharves.
- 9 (10) Engaging in or participating with other governmental entities in  
10 acquiring, constructing, reconstructing, extending, or otherwise  
11 building or improving beach erosion control or flood and hurricane  
12 protection works, including, but not limited to, the acquisition of any  
13 property that may be required as a source for beach renourishment.
- 14 (11) Establishing access for the public to public trust beaches and  
15 appurtenant parking areas.

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

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

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

26 (c) Other Public Condemnors. – For the public use or benefit, the following  
27 political entities shall possess the power of eminent domain and may acquire property  
28 by purchase, gift, or condemnation for the stated purposes.

- 29 (1) A sanitary district board established under the provisions of Part 2 of  
30 Article 2 of Chapter 130A for the purposes stated in that Part.
- 31 (2) The board of commissioners of a mosquito control district established  
32 under the provisions of Part 2 of Article 12 of Chapter 130A for the  
33 purposes stated in that Part.
- 34 (3) A hospital authority established under the provisions of Part B of  
35 Article 2 of Chapter 131E for the purposes stated in that Part,  
36 provided, however, that the provisions of G.S. 131E-24(c) shall  
37 continue to apply.
- 38 (4) A watershed improvement district established under the provisions of  
39 Article 2 of Chapter 139 for the purposes stated in that Article,  
40 provided, however, that the provisions of G.S. 139-38 shall continue to  
41 apply.
- 42 (5) A housing authority established under the provisions of Article 1 of  
43 Chapter 157 for the purposes of that Article, provided, however, that  
44 the provisions of G.S. 157-11 shall continue to apply.

- 1 (6) A corporation as defined in G.S. 157-50 for the purposes of Article 3  
2 of Chapter 157, provided, however, the provisions of G.S. 157-50 shall  
3 continue to apply.
- 4 (7) A commission established under the provisions of Article 22 of  
5 Chapter 160A for the purposes of that Article.
- 6 (8) An authority created under the provisions of Article 1 of Chapter 162A  
7 for the purposes of that Article.
- 8 (9) A district established under the provisions of Article 4 of Chapter  
9 162A for the purposes of that Article.
- 10 (10) A district established under the provisions of Article 5 of Chapter  
11 162A for purposes of that Article.
- 12 (11) The board of trustees of a community college established under the  
13 provisions of Article 2 of Chapter 115D for the purposes of that  
14 Article.
- 15 (12) A district established under the provisions of Article 6 of Chapter  
16 162A for the purposes of that Article.
- 17 (13) A regional public transportation authority established under Article 26  
18 of Chapter 160A of the General Statutes for the purposes of that  
19 Article.

20 The power of eminent domain shall be exercised by a public condemnor listed in this  
21 subsection under the procedures of Article 3 of this Chapter."

22 **SECTION 3.** G.S. 159-83(a)(1) reads as rewritten:

23 "(1) To acquire by gift, purchase, or exercise of the power of eminent  
24 domain or to construct, reconstruct, improve, maintain, better, extend,  
25 and operate, one or more revenue bond projects or any portion thereof  
26 without regard to location within or without its boundaries, upon  
27 determination (i) in the case of the State, by the Council of State and  
28 (ii) in the case of a municipality, by resolution of the governing board  
29 that a location wholly or partially outside its boundaries is necessary  
30 and in the public interest. The authority to exercise the power of  
31 eminent domain granted in this subdivision shall not apply to  
32 economic development projects described in G.S. 159-81(3)m., unless  
33 revenue bonds for the economic development project were approved  
34 by the Local Government Commission pursuant to G.S. 159-87 prior  
35 to July 1, 2006."

36 **SECTION 4.** This act becomes effective July 1, 2006.