

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1965
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Senate Judiciary I Committee Substitute Adopted 6/22/06
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Short Title: Eminent Domain Restrictions.

(Public)

Sponsors:

Referred to:

May 15, 2006

A BILL TO BE ENTITLED

1 AN ACT TO RESTRICT THE STATUTORY PURPOSES FOR WHICH EMINENT
2 DOMAIN MAY BE USED BY PRIVATE CONDEMNORS, LOCAL PUBLIC
3 CONDEMNORS, AND OTHER PUBLIC CONDEMNORS, AND FOR CERTAIN
4 REVENUE BOND PROJECTS, AS RECOMMENDED BY THE HOUSE SELECT
5 COMMITTEE ON EMINENT DOMAIN POWERS.
6

7 The General Assembly of North Carolina enacts:

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

9 "**§ 40A-1. Exclusive provisions.**

10 (a) Notwithstanding the provisions of any local act, it is the intent of the General
11 Assembly that, effective July 1, 2006, the uses set out in G.S. 40A-3 are the exclusive
12 uses for which the authority to exercise the power of eminent domain is granted to
13 private condemners, local public condemners, and other public condemners. Effective
14 July 1, 2006, a local act granting the authority to exercise the power of eminent domain
15 to a private condemner, local public condemner, or other public condemner for a use or
16 purpose other than those granted to it in G.S. 40A-3(a), (b), (b1), or (c) is not effective
17 for that use or purpose. Provided that, any eminent domain action commenced before
18 July 1, 2006, for a use or purpose granted in a local act, may be lawfully completed
19 pursuant to the provisions of that local act. The provisions of this subsection shall not
20 repeal any provision of a local act limiting the purposes for which the authority to
21 exercise the power of eminent domain may be used.

22 (b) It is the intent of the General Assembly that the procedures provided by this
23 Chapter shall be the exclusive condemnation procedures to be used in this State by all
24 private condemners and all local public condemners. All other provisions in laws,
25 charters, or local acts authorizing the use of other procedures by municipal or county
26 governments or agencies or political subdivisions thereof, or by corporations,
27 associations or other persons are hereby repealed effective January 1, 1982.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~~ Chapter shall not repeal any provision of a local act ~~enlarging or~~
4 limiting the purposes for which property may be condemned. Notwithstanding the
5 language of G.S. 40A-3(b), this Chapter also shall not repeal any provision of a local act
6 creating any substantive or procedural requirement or limitation on the authority of a
7 local public condemnor to exercise the power of eminent domain outside of its
8 boundaries."

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

10 **"§ 40A-3. By whom right may be exercised.**

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

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

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

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

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

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

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

38 (4) Any railroad company has the power of eminent domain for the
39 purposes of: constructing union depots; maintaining, operating,
40 improving or straightening lines or of altering its location; constructing
41 double tracks; constructing and maintaining new yards and terminal
42 facilities or enlarging its yard or terminal facilities; connecting two of
43 its lines already in operation not more than six miles apart; or
44 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 2.1.** G.S. 160A-503 is amended by adding a new subdivision to
23 read:

24 "(2a) 'Blighted parcel' shall mean a parcel on which there is a predominance
25 of buildings or improvements (or which is predominantly residential in
26 character), and which, by reason of dilapidation, deterioration, age or
27 obsolescence, inadequate provision for ventilation, light, air,
28 sanitation, or open spaces, high density of population and
29 overcrowding, unsanitary or unsafe conditions, or the existence of
30 conditions which endanger life or property by fire and other causes, or
31 any combination of such factors, substantially impairs the sound
32 growth of the community, is conducive to ill health, transmission of
33 disease, infant mortality, juvenile delinquency and crime, and is
34 detrimental to the public health, safety, morals or welfare; provided, no
35 parcel shall be considered a blighted parcel nor subject to the power of
36 eminent domain, within the meaning of this Article, unless it is
37 determined by the planning commission that the parcel is blighted."

38 **SECTION 2.2.** G.S. 160A-503(2) reads as rewritten:

39 "(2) "Blighted area" shall mean an area in which there is a predominance of
40 buildings or improvements (or which is predominantly residential in
41 character), and which, by reason of dilapidation, deterioration, age or
42 obsolescence, inadequate provision for ventilation, light, air,
43 sanitation, or open spaces, high density of population and
44 overcrowding, unsanitary or unsafe conditions, or the existence of

1 conditions which endanger life or property by fire and other causes, or
 2 any combination of such factors, substantially impairs the sound
 3 growth of the community, is conducive to ill health, transmission of
 4 disease, infant mortality, juvenile delinquency and crime, and is
 5 detrimental to the public health, safety, morals or welfare; provided, no
 6 area shall be considered a blighted area ~~nor subject to the power of~~
 7 ~~eminent domain,~~ within the meaning of this Article, unless it is
 8 determined by the planning commission that at least two thirds of the
 9 number of buildings within the area are of the character described in
 10 this subdivision and substantially contribute to the conditions making
 11 such area a blighted area; provided that if the power of eminent
 12 domain shall be exercised under the provisions of this Article, it may
 13 only be exercised to take a blighted parcel as defined in subdivision
 14 (2a) of this section, and the property owner or owners or persons
 15 having an interest in property shall be entitled to be represented by
 16 counsel of their own selection and their reasonable counsel fees fixed
 17 by the court, taxed as a part of the costs and paid by the petitioners."

18 **SECTION 2.3.** G.S. 160A-512(6) reads as rewritten:

19 **"§ 160A-512. Powers of commission.**

20 A commission shall constitute a public body, corporate and politic, exercising public
 21 and essential governmental powers, which powers shall include all powers necessary or
 22 appropriate to carry out and effectuate the purposes and provisions of this Article,
 23 including the following powers in addition to those herein otherwise granted:

- 24 ...
- 25 (6) its area of operation, to purchase, obtain options upon, acquire by gift,
 26 grant, bequest, devise, eminent domain or otherwise, any real or
 27 personal property or any interest therein, together with any
 28 improvements thereon, necessary or incidental to a redevelopment
 29 ~~project; project, except that eminent domain may only be used to take~~
 30 a blighted parcel; to hold, improve, clear or prepare for redevelopment
 31 any such property, and subject to the provisions of G.S. 160A-514, and
 32 with the approval of the local governing body sell, exchange, transfer,
 33 assign, subdivide, retain for its own use, mortgage, pledge,
 34 hypothecate or otherwise encumber or dispose of any real or personal
 35 property or any interest therein, either as an entirety to a single
 36 "redeveloper" or in parts to several redevelopers; provided that the
 37 commission finds that the sale or other transfer of any such part will
 38 not be prejudicial to the sale of other parts of the redevelopment area,
 39 nor in any other way prejudicial to the realization of the redevelopment
 40 plan approved by the governing body; to enter into contracts, either
 41 before or after the real property that is the subject of the contract is
 42 acquired by the Commission (although disposition of the property is
 43 still subject to G.S. 160A-514), with "redevelopers" of property
 44 containing covenants, restrictions, and conditions regarding the use of

1 such property for residential, commercial, industrial, recreational
 2 purposes or for public purposes in accordance with the redevelopment
 3 plan and such other covenants, restrictions and conditions as the
 4 commission may deem necessary to prevent a recurrence of blighted
 5 areas or to effectuate the purposes of this Article; to make any of the
 6 covenants, restrictions or conditions of the foregoing contracts
 7 covenants running with the land, and to provide appropriate remedies
 8 for any breach of any such covenants or conditions, including the right
 9 to terminate such contracts and any interest in the property created
 10 pursuant thereto; to borrow money and issue bonds therefor and
 11 provide security for bonds; to insure or provide for the insurance of
 12 any real or personal property or operations of the commission against
 13 any risks or hazards, including the power to pay premiums on any such
 14 insurance; and to enter into any contracts necessary to effectuate the
 15 purposes of this Article;

16 ..."

17 **SECTION 2.4.** G.S. 160A-515 reads as rewritten:

18 "**§ 160A-515. Eminent domain.**

19 The commission may exercise the right of eminent domain in accordance with the
 20 provisions of Chapter-40A. 40A, but only where the property to be taken is a blighted
 21 parcel."

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.