

**HOUSE SELECT COMMITTEE
ON EMINENT DOMAIN POWERS**



*INTERIM REPORT TO THE
2006 REGULAR SESSION OF THE
2005 GENERAL ASSEMBLY
OF NORTH CAROLINA*

A LIMITED NUMBER OF COPIES OF THIS REPORT ARE AVAILABLE
FOR DISTRIBUTION THROUGH THE LEGISLATIVE LIBRARY.

Rooms 2126, 2226
State Legislative Building
Raleigh, North Carolina 27611
Telephone: (919) 733-7778

or

Room 500
Legislative Office Building
Raleigh, North Carolina 27603-5925
Telephone: (919) 733-9390

TABLE OF CONTENTS

| | |
|---|----|
| Letter of Transmittal | 5 |
| Membership of the House Select Committee on Eminent Domain Powers | 7 |
| Staff of the House Select Committee on Eminent Domain Powers | 8 |
| Interim Report | 9 |
| Explanation of Recommended Legislation | 10 |
| <hr/> | |
| Attachment #1: Speaker's Charge | 11 |
| Attachment #2: Recommended Legislation | 14 |

May 5, 2006

Dear Speaker Black:

In accordance with your charge to the House Select Committee on Eminent Domain Powers, we submit the Interim Report of the House Select Committee on Eminent Domain Powers to the 2006 Regular Session of the 2005 General Assembly.

Respectfully submitted,

Representative Wilma Sherrill
Representative D. Bruce Goforth
Co-Chairs
House Select Committee on Eminent Domain Powers

Copies to:
Office of the House Principal Clerk
Legislative Library

MEMBERSHIP

HOUSE SELECT COMMITTEE ON EMINENT DOMAIN POWERS 2005-2006

Speakers' Appointments

Rep. Daniel Bruce Goforth, Co-Chair
North Carolina House of Representatives
16 W. Jones Street, Room 1220
Raleigh, NC 27601-1096
(919) 733-5746

Rep. Wilma Money Sherrill, Co-Chair
North Carolina House of Representatives
300 N. Salisbury Street, Room 305
Raleigh, NC 27603-5925
(919) 715-3026

Rep. Lucy T. Allen
North Carolina House of Representatives
16 W. Jones Street, Room 1307
Raleigh, NC 27601-1096
(919) 733-5860

Rep. David Almond
North Carolina House of Representatives
16 W. Jones Street, Room 1315
Raleigh, NC 27601-1096
(919) 733-5908

Rep. E. Nelson Cole
North Carolina House of Representatives
16 W. Jones Street, Room 1218
Raleigh, NC 27601-1096
(919) 733-5779

Rep. W. Robert Grady
North Carolina House of Representatives
300 N. Salisbury Street, Room 302
Raleigh, NC 27603-5925
(919) 715-9644

Rep. Julia Craven Howard
North Carolina House of Representatives
16 W. Jones Street, Room 1106
Raleigh, NC 27601-1096
(919) 733-5904

Rep. Edward Jones
North Carolina House of Representatives
300 N. Salisbury Street, Room 542
Raleigh, NC 27603-5925
(919) 733-5878

Rep. Henry M. Michaux Jr.
North Carolina House of Representatives
16 W. Jones Street, Room 1227
Raleigh, NC 27601-1096
(919) 715-2528

Rep. Deborah K. Ross
North Carolina House of Representatives
16 W. Jones Street, Room 2223
Raleigh, NC 27601-1096
(919) 773-5773

Rep. Drew Paschal Saunders
North Carolina House of Representatives
16 W. Jones Street, Room 2217
Raleigh, NC 27601-1096
(919) 733-5606

Rep. Alice Graham Underhill
North Carolina House of Representatives
16 W. Jones Street, Room 1206
Raleigh, NC 27601-1096
(919) 733-5853

STAFF

HOUSE SELECT COMMITTEE ON EMINENT DOMAIN POWERS 2005-2006

Steven Rose, Committee Counsel
Erika Churchill, Committee Counsel
Research Division
(919) 733-2578
Fax: (919) 715-5460

Gerry Cohen, Committee Counsel
Bill Drafting Division
(919) 733-6660
Fax: (919) 715-5459

Rosa Kelley, Committee Assistant
Legislative Office Building, Room 305
(919) 715-3026
Fax: (919) 754-3217

House Select Committee on Eminent Domain Powers Interim Report to the 2005 General Assembly, 2006 Regular Session

The House Select Committee on Eminent Domain Powers (Committee) was created by the Speaker of the House on December 8, 2005 to study the effect in North Carolina of the 2005 United States Supreme Court decision in *Kelo v. City of New London*, as well as other issues related to the use of the power of eminent domain. The Committee was given broad authority to study eminent domain and was authorized to make an interim report to the 2006 Regular Session and a final report by December 31, 2006. The Speaker's charge to the Committee is Attachment 1.

The Committee has held five meetings. It has heard from speakers familiar with eminent domain and its application in various circumstances. These speakers included members of the public, public officials, and others familiar with various aspects of the issues involved. The Committee considered two draft bills for recommendation to the 2006 Regular Session. It recommends the bill accompanying this interim report as Attachment 2. This bill includes those items on which the Committee could reach consensus at this time, leaving other matters for further study and possible recommendation in the final report.

The Committee will consider the following issues when it resumes its work after the 2006 Regular Session:

- The adequacy of damages paid to persons whose property is condemned.
- Payment of damages to persons who operate businesses on condemned property that is affected by a condemnation action, whether or not they own the condemned property.
- Payment of attorneys' fees and other expenses associated with condemnation proceedings.
- How to ensure that initial offers to condemnees and affected businesses are sufficient so that the likelihood of contested condemnations can be reduced.
- The six charges contained in the Speaker's charge to the Committee.

An explanation of the recommended legislation follows.

Explanation of Recommended Legislation

Section 1 of the bill restates that the purposes for which local governments, local government agencies, and public utilities are authorized to use the power of eminent domain are those authorized by G.S. 40A-3. It repeals local acts authorizing other uses of the power of eminent domain, effective July 1, 2006. Any eminent domain action commenced before July 1, 2006, for a use or purpose granted by a local act, may be completed.

Section 2 of the bill makes technical changes.

Section 3 of the bill repeals the authority to use the power of eminent domain in connection with revenue bond projects as defined in G.S. 159-81(3)m. These *include* industrial parks, land suitable for industrial or commercial purposes, and lease or sale of shell buildings in order to provide employment opportunities. There is an exception for such projects when the revenue bond was approved by the Local Government Commission prior to July 1, 2006.

Section 4 makes the act effective July 1, 2006.

ATTACHMENT 1



**Office of the Speaker
North Carolina House of Representatives
Raleigh, North Carolina 27601-1096**

HOUSE SELECT COMMITTEE ON EMINENT DOMAIN POWERS

**TO THE HONORABLE MEMBERS OF THE
NORTH CAROLINA HOUSE OF REPRESENTATIVES**

Section 1. The **House Select Committee on Eminent Domain Powers** (hereinafter "Committee") is established by the Speaker of the House of Representatives pursuant to G.S. 120-19.6 and Rule 26(a) of the Rules of Representatives of the 2005 General Assembly.

Section 2. The Committee consists of the eleven members listed below, appointed by the Speaker of the House of Representatives. Members serve at the pleasure of the Speaker of the House. The Speaker of the House may dissolve the Committee at any time.

Representative Bruce Goforth – Co-Chair
Representative Wilma M. Sherrill – Co-Chair
Representative Lucy T. Allen
Representative David Almond
Representative Nelson Cole
Representative W. Robert Grady
Representative Julia C. Howard
Representative Edward Jones
Representative Deborah K. Ross
Representative Drew Saunders
Representative Alice Graham Underhill

Section 3. The Committee shall study the following in connection with the use of the power of eminent domain by local governments and other entities in the State:

(1) The effect of the ruling of the United States Supreme Court in the case of *Kelo v. City of New London* on the use of the power of eminent domain granted by the State to local governments and other entities.

(2) The uses of eminent domain that should be allowed to local governments and other entities and the restrictions that should be placed upon those uses.

(3) The procedures used in the condemnation of private property and whether or not those procedures afford ample rights to property owners for the protection of their property and whether those procedures provide for the payment of the true market value of property that is condemned for a public purpose.

(4) The means by which property owners whose property is sought to be condemned may be placed on an even footing with the condemning local government or other entity so that the property owners are not overwhelmed by the power of the public purse in the procurement of expert witnesses and legal representation.

(5) Whether changes in the laws or constitution of the State are needed and, if so, what those changes should be.

(6) Any other matters the Committee deems relevant to this subject.

Section 4. The Committee shall meet upon the call of its Co-chairs. A quorum of the Committee shall be a majority of its members.

Section 5. The Committee, while in discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and Article 5A of Chapter 120 of the General Statutes.

Section 6. Members of the Committee shall receive per diem, subsistence, and travel allowance as provided in G.S. 120-3.1.

Section 7. The expenses of the Committee including per diem, subsistence, travel allowances for Committee members, and contracts for professional or consultant services shall be paid upon the written approval of the Speaker of the House of Representatives pursuant to G.S. 120-32.02(c) and G.S. 120-35 from funds available to the House of Representatives for its operations.

Section 8. The Legislative Services Officer shall assign professional and clerical staff to assist the Committee in its work. The House of Representatives' Director of Legislative Assistants shall assign clerical support staff to the Committee.

Section 9. The Committee may meet at various locations around the State in order to promote greater public participation in its deliberations. The Legislative Services Commission shall grant adequate meeting space to the Committee in the State Legislative Building or the Legislative Office Building.

Section 10. The Committee may submit an interim report on the results of the study, including any proposed legislation, on or before May 1, 2006, by filing a copy of the report with the Speaker's Office, the House Principal Clerk, and the Legislative Library. The Committee shall submit a final report on the results of its study, including any proposed legislation, to the members of the House of Representatives on or before December 31, 2006, by filing the final report with the Speaker's Office, the House Principal Clerk, and the Legislative

Library. The Committee terminates on December 31, 2006, or upon the filing of its final report, whichever occurs first.

Effective this 8th day of December, 2005.

A handwritten signature in black ink, appearing to read "James B. Black". The signature is written in a cursive style and is positioned above a horizontal line. A vertical red line is visible to the right of the signature.

James B. Black, Speaker

ATTACHMENT 2
GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

U

D

BILL DRAFT 2005-RL-11A [v.3] (02/20)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/3/2006 5:16:43 PM

Short Title: Eminent Domain Restrictions.

(Public)

Sponsors: .Unknown

Referred to:

A BILL TO BE ENTITLED

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

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, any local act granting the authority to exercise the power of eminent
15 domain to a private condemner, local public condemner, or other public condemner for
16 a use or purpose other than those granted to it in G.S. 40A-3, is repealed. Provided that,
17 any eminent domain action commenced before July 1, 2006, for a use or purpose
18 granted in a local act, may be lawfully completed pursuant to the provisions of that local
19 act. The provisions of this subsection shall not repeal any provision of a local act
20 limiting the purposes for which the authority to exercise the power of eminent domain
21 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 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.

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.

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.