



# HOUSE BILL 271: Eminent Domain.

2021-2022 General Assembly

<b>Committee:</b>	House Rules, Calendar, and Operations of the House	<b>Date:</b>	March 24, 2021
<b>Introduced by:</b>	Reps. Riddell, Arp, Tyson, Brody	<b>Prepared by:</b>	Brad Krehely
<b>Analysis of:</b>	First Edition		Staff Attorney

**OVERVIEW:** *House Bill 271 proposes that the North Carolina Constitution be amended to prohibit condemnation of private property except for a public use and to require the payment of just compensation for the property taken in an amount to be determined by jury trial, if requested by any party. The bill also makes a conforming statutory change to state the purpose for which property may be taken by eminent domain as "public use," and clarifies the types of construction projects for which private property may be acquired by eminent domain by private condemnors, local public condemnors and other public condemnors subject to G.S. 40A-3.*

**BACKGROUND:** The right of citizens in North Carolina to receive just compensation for property taken by eminent domain for public use is guaranteed under both the United States Constitution and the North Carolina Constitution.<sup>1</sup>

The North Carolina Supreme Court has recognized several tests to determine if a particular taking is permissible, including "public use", "public purpose," and "public benefit,"<sup>2</sup> and has also held that the General Assembly "has the right to determine what portion of this power it will delegate to public or private corporations."<sup>3</sup>

The General Assembly has enacted various statutes authorizing the use of eminent domain to acquire property by condemnation for "public use or benefit" under certain circumstances.

Chapter 40A of the General Statutes provides condemnation procedures for private condemnors, local public condemnors and other public condemnors. G.S. 40A-3 provides the list of specific purposes for which the power may be used by those condemnors. Other State agencies are granted the power of eminent domain for specified purposes in other Chapters of the General Statutes, such as the Department of Transportation under Chapter 136.

<sup>1</sup> The 5<sup>th</sup> Amendment to the United States Constitution states that private property shall not "be taken for public use without just compensation." Article I, Section 19 of the North Carolina Constitution states that "[n]o person shall be...in any manner deprived of his ... property, but by the law of the land." The North Carolina Supreme Court has ruled that the fundamental right to just compensation for property taken by eminent domain arises from this section. Long v. City of Charlotte, 306 N.C. 187, 195-96, 293 S.E.2d 101, 107-08 (1982) (footnotes and citations omitted), superseded on other grounds by statute, Act of July 10, 1981, ch. 919, sec. 28, 1981 N.C. Sess. Laws 1382, 1402. In addition, Section 1 of the 14<sup>th</sup> amendment to the U.S. Constitution provides that no state may "deprive any person of life, liberty, or property, without due process of law."

<sup>2</sup> See, e.g., Carolina Telephone and Telegraph Co. v McLeod, 321 N.C. 426, 364 S.E.2d 399 (1988), and Piedmont Triad Airport Authority V. Urbine, 354 N.C. 336, 554 S.E.2d 331 (2001).

<sup>3</sup> Carolina Telephone and Telegraph Co. v McLeod, *supra*, 321 N.C. at 429, 364 S.E.2d at 401.

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Although the North Carolina Supreme Court has ruled that there is no State Constitutional right to a jury trial on the issue of compensation for property taken by eminent domain,<sup>4</sup> State statutes do authorize a jury trial on the issue of compensation for the taking of property.<sup>5</sup>

In 2006, the General Assembly made clear that the purposes in G.S. 40A-3 are the only purposes for which eminent domain may be exercised by private condemnors, local public condemnors, and other public condemnors. Local acts that broadened the power were repealed. The General Assembly also excluded economic development projects from the list of revenue bond projects from which eminent domain powers may be used by the State and municipalities.<sup>6</sup>

## **BILL ANALYSIS:**

**Section 1** proposes to amend the North Carolina Constitution by adding a new Section 39 to Article I that would prohibit the taking of private property by eminent domain except for a public use. The amendment also would require just compensation to be paid as determined by jury trial if requested by any party.

**Section 2** provides that the amendment must be submitted to the voters of the State at the general election in 2022.

**Section 3** provides that if a majority of the votes cast on the question favor the amendment, the State Board of Elections must certify the amendment to the Secretary of State, who must then enroll the amendment. The amendment would become effective upon certification and would apply to takings occurring after that date.

**Section 4** amends G.S. 40A-3 to do all of the following:

- Change the purpose for which private, local public, and other public condemnors may condemn property from "public use or benefit" to "public use." By including this statutory change with the proposed constitutional amendment, this Section makes clear that, *in pari materia*, the General Assembly finds that condemnation by the authorized private, local public, and other public condemnors for a statutorily authorized reason remain valid as a public use.
- Clarify that the purposes for which private condemnors may acquire property for the public use include construction of "communication facilities" (replacing the current reference to "telegraphs" and "telephones") and "facilities related to the distribution of natural gas."
- Permit private condemnors, local public condemnors, and other public condemnors to acquire property by eminent domain for the connection of any customer or customers.

**EFFECTIVE DATE:** Section 4 of this act becomes effective when this act becomes law and applies to takings occurring on or after that date. The remainder of this act is effective when it becomes law.

Bill Patterson, Staff Attorney for the Legislative Analysis Division, contributed to this summary.

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<sup>4</sup> Kaperonis v. NC State Highway Commission, 260 N.C. 587, 133 S.E.2d 464 (1963).

<sup>5</sup> G.S. 40A-29 (private condemnors), G.S. 40A-48(d) (public condemnors); G.S. 136-109 (DOT condemnations).

<sup>6</sup> S.L. 2006-224. The act was in part, a response to the U.S. Supreme Court decision in the case of Kelo v. City of New London, 545 U.S. 469 (2005). The case held that the State of Connecticut could constitutionally condemn private property for the purpose of transferring some of the property to a third party for economic development purposes. The court found that the redevelopment plan pursuant to which the condemnation and transfer occurred was a public use. The court also reaffirmed its broad interpretation of the term "public purpose" as meeting the requirements of "public use."