



## HOUSE BILL 3: Eminent Domain

2013-2014 General Assembly

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<b>Committee:</b>	House Judiciary II	<b>Date:</b>	February 3, 2015
<b>Introduced by:</b>	Reps. McGrady, Stam, Lewis, Goodman	<b>Prepared by:</b>	Bill Patterson
<b>Analysis of:</b>	First Edition		Committee Counsel

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**SUMMARY:** *House Bill 3 proposes an amendment to the North Carolina Constitution to prohibit condemnation of private property except for a public use, requires the payment of just compensation for the property taken, requires the compensation to be determined by jury trial, if requested by any party, and changes the statutory purpose for which property may be taken by eminent domain from "public use or benefit" to "public use".*

### CURRENT LAW:

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.

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.<sup>1</sup> In addition, Section 1 of the 14<sup>th</sup> amendment to the United States Constitution provides that no state may "deprive any person of life, liberty, or property, without due process of law."

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>

Our Supreme Court has 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 condemners, local public condemners and other public condemners. G.S. 40A-3 provides the list of specific purposes for which the power may be used by those condemners. 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.

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<sup>1</sup> Long v. City of Charlotte, 306 N.C. 187, 293 S.E.2d 101 (1982).

<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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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, however, do authorize a jury trial on the issue of compensation for the taking of property. G.S. 40A-29, 136-109.

In 2006, the General Assembly amended State law to repeal local acts that had broadened the purposes for which eminent domain may be used beyond those set forth in G.S. 40A-3, and to limit the use of eminent domain for certain revenue bond projects. 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 (2005), discussed below in the Background section of this summary.

## **BILL ANALYSIS:**

**Section 1** proposes to amend the North Carolina Constitution by adding a new Section 19.1 to Article I. The new section would prohibit the taking of private property by eminent domain except for a public use. The proposed amendment also requires that just compensation be paid and that the amount be determined by a jury if requested by any party.

**Section 2** provides that the amendment shall be submitted to the voters of the State at the statewide election on May 3, 2016.

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

**Section 4** amends G.S. 40A-3 to change the purpose for which private, local public, and other public condemnors may condemn property from "public use or benefit" to "public use".

In addition, Section 4 modifies the types of construction for which private condemnors may acquire property for the public use, by replacing "telegraphs" and "telephones" with "communication facilities," adding "facilities related to the distribution of natural gas," and inserting "natural" before "gas" in the list of commodities for the transportation of which private condemnors may construct pipelines or mains on condemned property.

**Section 5** amends G.S. 40A-3 to add a new subsection (d) providing that private condemnors, local public condemnors, and other public condemnors subject to G.S. 40A-3 shall have and may exercise the power of eminent domain to acquire property for the connection of any customer or customers.

**EFFECTIVE DATE:** Sections 4 and 5 of this act become effective when this act becomes law and apply to takings occurring on or after that date. The remainder of this act is effective when it becomes law.

**BACKGROUND:** In 2005, the U.S. Supreme Court decided 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." Attached is a summary of the case prepared by Steve Rose, former Principal Legislative Analyst in the Research Division.

*Brad Krehely and Giles Perry, Staff Attorneys in the Research Division, substantially 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).

## *Kelo v. City of New London-Overview*

545 U.S. 469 (2005)

**BACKGROUND:** The City of New London was in economic distress and sought to establish and carry out a comprehensive economic development plan as authorized by state statute. The target area was not considered blighted. Certain residents refused to sell and the city proceeded to condemn those properties through the use of eminent domain powers granted by the state statute.

**COURT CASE:** The case eventually reached the United States Supreme Court where the key question was whether or not the use of the properties in question was for a "public use" as required by the Fifth Amendment to the U.S. Constitution based upon the substantial positive effect that was sought to be achieved for the local economy by the redevelopment plan's positive effect on the local economy. In a 5-4 decision the Court held that the intended use was a "public use," which the Court has long interpreted to mean a "public purpose." The fact that a public purpose would be achieved by transferring some of the property in question to a private party to carry out the development does not matter as long as it is part of a comprehensive plan of redevelopment aimed at producing the public purpose of economic recovery, and as long as the main purpose of the condemnation is not merely to place one person's property in the hands of another.

The dissent maintained that the use of eminent domain in question crossed the line of "public use" and presented a situation where eminent domain could be used to take property from one person in order to give it to another simply because the recipient proposed a use that was in some way better for the public.

The majority opinion emphasized that whether or not the power of eminent domain was authorized in a particular situation was a matter of state law and not the Constitution. The majority opinion stated that the Constitution merely sets the limits that the purpose is for a "public use" and that the owner is paid just compensation.

### ***Important points made in the opinion of the Court:***

- A public purpose meets the requirement of "public use," and the Court has interpreted it this way since 1896.
- "Public purpose" will be interpreted broadly.
- The Court would give great deference to legislative judgment as to the need involved and the method of achieving it.
- The comprehensive character of the plan and the substantial deliberation involved in its adoption is significant in determining that its purpose was to benefit the public.
- Promoting economic development is a traditional and long accepted function of government.
- It is permissible to achieve a public purpose by transferring property into the hands of a private party (citing the Court's 1954 decision in *Berman v. Parker* and its 1984 decision in *Hawaii Housing Authority v. Midkiff*).
- Nothing in the decision precludes any state from placing further restrictions on its eminent domain powers.