

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE DRS25132-ML-186D* (12/04)

Short Title: Town of Duck/Eminent Domain. (Local)

Sponsors: Senator Cook (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW THE TOWN OF DUCK TO EXERCISE THE POWER OF EMINENT
3 DOMAIN FOR PURPOSES OF ENGAGING IN BEACH EROSION CONTROL AND
4 FLOOD AND HURRICANE PROTECTION WORKS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 40A-3(b1) reads as rewritten:

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

- 11 (1) Opening, widening, extending, or improving roads, streets, alleys, and
12 sidewalks. The authority contained in this subsection is in addition to the
13 authority to acquire rights-of-way for streets, sidewalks and highways under
14 Article 9 of Chapter 136. The provisions of this subdivision (1) shall not
15 apply to counties.
- 16 (2) Establishing, extending, enlarging, or improving any of the public
17 enterprises listed in G.S. 160A-311 for cities, or G.S. 153A-274 for counties.
- 18 (3) Establishing, enlarging, or improving parks, playgrounds, and other
19 recreational facilities.
- 20 (4) Establishing, extending, enlarging, or improving storm sewer and drainage
21 systems and works, or sewer and septic tank lines and systems.
- 22 (5) Establishing, enlarging, or improving hospital facilities, cemeteries, or
23 library facilities.
- 24 (6) Constructing, enlarging, or improving city halls, fire stations, office
25 buildings, courthouse jails and other buildings for use by any department,
26 board, commission or agency.
- 27 (7) Establishing drainage programs and programs to prevent obstructions to the
28 natural flow of streams, creeks and natural water channels or improving
29 drainage facilities. The authority contained in this subdivision is in addition
30 to any authority contained in Chapter 156.
- 31 (8) Acquiring designated historic properties, designated as such before October
32 1, 1989, or acquiring a designated landmark designated as such on or after
33 October 1, 1989, for which an application has been made for a certificate of
34 appropriateness for demolition, in pursuance of the purposes of
35 G.S. 160A-399.3, Chapter 160A, Article 19, Part 3, effective until October
36 1, 1989, or G.S. 160A-400.14, whichever is appropriate.



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- 1 (9) Opening, widening, extending, or improving public wharves.
- 2 (10) Engaging in or participating with other governmental entities in acquiring,
- 3 constructing, reconstructing, extending, or otherwise building or improving
- 4 beach erosion control or flood and hurricane protection works, including, but
- 5 not limited to, the acquisition of any property that may be required as a
- 6 source for beach renourishment.
- 7 (11) Establishing access for the public to public trust beaches and appurtenant
- 8 parking areas.

9 The board of education of any municipality or county or a combined board may exercise
 10 the power of eminent domain under this Chapter for purposes authorized by Chapter 115C of
 11 the General Statutes.

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

14 This subsection applies only to Carteret and Dare Counties, the Towns of Atlantic Beach,
 15 Carolina Beach, Caswell Beach, Emerald Isle, Holden Beach, Indian Beach, Kill Devil Hills,
 16 Kitty Hawk, Kure Beach, Nags Head, North Topsail Beach, Oak Island, Ocean Isle Beach, Pine
 17 Knoll Shores, Sunset Beach, Surf City, Topsail Beach, and Wrightsville Beach, and the Village
 18 of Bald Head Island. This subsection, excluding subdivision (11) of this subsection, applies to
 19 the Town of Duck."

20 **SECTION 2.** G.S. 40A-42(a)(2) reads as rewritten:

- 21 "(a) ...
- 22 (2) Modified Provision for Certain Localities. – When a local public condemnor
- 23 is acquiring property by condemnation for a purpose set out in
- 24 G.S. 40A-3(b1)(1), (4), (7), (10), or (11), or when a city is acquiring
- 25 property for a purpose set out in G.S. 160A-311(1), (2), (3), (4), (6), or (7),
- 26 or when a county is acquiring property for a purpose set out in
- 27 G.S. 153A-274(1), (2) or (3), or when a local board of education or any
- 28 combination of local boards of education is acquiring property for any
- 29 purpose set forth in G.S. 115C-517, or when a condemnor is acquiring
- 30 property by condemnation as authorized by G.S. 40A-3(c)(8), (9), (10), (12),
- 31 or (13) title to the property and the right to immediate possession shall vest
- 32 pursuant to this subsection. Unless an action for injunctive relief has been
- 33 initiated, title to the property specified in the complaint, together with the
- 34 right to immediate possession thereof, shall vest in the condemnor upon the
- 35 filing of the complaint and the making of the deposit in accordance with
- 36 G.S. 40A-41.

37 This subdivision applies only to Carteret and Dare Counties, the Towns
 38 of Atlantic Beach, Carolina Beach, Caswell Beach, Duck, Emerald Isle,
 39 Holden Beach, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach,
 40 Nags Head, North Topsail Beach, Oak Island, Ocean Isle Beach, Pine Knoll
 41 Shores, Sunset Beach, Surf City, Topsail Beach, and Wrightsville Beach,
 42 and the Village of Bald Head Island."

43 **SECTION 3.** This act is effective when it becomes law.