



HOUSE BILL 204: Caswell Beach/Quick Take Eminent Domain

2015-2016 General Assembly

Committee: House Local Government
Introduced by: Rep. Iler
Analysis of: First Edition

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SUMMARY: *House Bill 204 would authorize the Town of Caswell Beach to use the "quick take" condemnation process for the taking of property for a fire and emergency services public facility.*

[As introduced, this bill was identical to S216, as introduced by Sen. Rabon, which is currently in Rules and Operations of the Senate.]

CURRENT LAW: Under current law, cities and counties may use the power of eminent domain for the purposes listed in G.S. 40A-3(b), such as constructing city streets, building water and sewer lines, establishing parks, etc. G.S. 40A-3(b1) provides several coastal counties and towns the following two additional purposes for which they may use the power of eminent domain:

- Beach renourishment and hurricane protection works.
- Public access to beaches and appurtenant parking areas.

In exercising the power of eminent domain, a city or county may acquire the property by purchase, gift, or condemnation. Article 3 of Chapter 40A provides the procedures by which a county or city may condemn property. Generally, the public condemnor must file a civil action to condemn the property in the superior court in which the land is located and must provide a deposit in the amount estimated by the condemnor to be just compensation for the taking. Compensation is generally the fair market value (FMV) of the property. In the case of a taking of less than an entire tract, compensation is usually the greater of (i) the diminution on value, or (ii) the FMV of the property taken. The condemnor is allowed to take title to the property and has the right to possess the property upon the filing of an answer by the owner who does not challenge the authority of the condemnor, or upon the failure of an owner to file an answer within 120 days, or upon the disbursement of the deposit.

In limited circumstances under G.S. 40A-42(a), the condemnor has the right to immediate possession of the property when the complaint is filed. This action is sometimes referred to as "quick take condemnation." However, under this quick take authority, the compensation for the property is not questioned; the only difference is the date upon which possession of the property vests with the condemnor. The purposes for which the "quick take" process may be used are:

- Opening, widening, extending, or improving roads, streets, alleys, and sidewalks.
- Establishing, extending, enlarging, or improving storm sewer and drainage systems and works, or sewer and septic tank lines and systems.
- Establishing drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or improving drainage facilities.
- Beach renourishment.
- Public access to beaches and appurtenant parking areas.
- A city is acquiring property for a public enterprise fund, for any of the following purposes:
 - Electric power generation, transmission, and distribution systems.
 - Water supply and distribution systems.



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- Wastewater collection, treatment, and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems.
- Gas production, storage, transmission, and distribution systems, where systems shall also include the purchase or lease of natural gas fields and natural gas reserves, the purchase of natural gas supplies, and the surveying, drilling and any other activities related to the exploration for natural gas, whether within the State or without.
- Solid waste collection and disposal systems and facilities.
- Cable television systems.
- A county is acquiring property for a public enterprise fund, for any of the following purposes:
 - Water supply and distribution systems.
 - Wastewater collection, treatment, and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems.
 - Solid waste collection and disposal systems and facilities.

In 2003, the General Assembly granted the Town of Caswell Beach the authority to use the "quick take" process. That authority has also been granted to: Carteret and Dare Counties, the Towns of Atlantic Beach, Carolina Beach, Caswell Beach, Duck, Emerald Isle, Holden Beach, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Nags Head, North Topsail Beach, Oak Island, Ocean Isle Beach, Pine Knoll Shores, Sunset Beach, Surf City, Topsail Beach, and Wrightsville Beach, and the Village of Bald Head Island.

BILL ANALYSIS: The bill would authorize the Town of Caswell Beach to use the quick take process, in addition to the other reason, for the constructing, enlarging, or improving city halls, fire stations, office buildings, courthouse jails and other buildings for use by any department, board, commission or agency for the taking of property for a public services facility housing a fire department and other emergency services providers.

EFFECTIVE DATE: Effective when it becomes law.