



This Bill Analysis reflects the contents of the bill as it was presented in committee.

HOUSE BILL 548: Conforming Changes/Constitutional Amend.

2016-2017 General Assembly

Committee:	Senate Rules and Operations of the Senate	Date:	June 27, 2016
Introduced by:	Reps. Bishop, Stam, Bryan, Hamilton	Prepared by:	Erika Churchill Staff Attorney
Analysis of:	PCS to Third Edition H548-CSST-127		

SUMMARY: *The proposed committee substitute for House Bill 548 would make statutory conforming changes if the voters approve certain constitutional amendments proposed in House Bill 3, 2015 Regular Session, on the following topics:*

- *Prohibit condemnation of private property except for a public use, requiring the payment of just compensation for the property taken, requiring the compensation to be determined by jury trial, if requested by any party.*
- *Establish an Emergency Savings Reserve Fund, with a 2/3 vote of each chamber to expend monies from the Fund, or to amend a required deposit to the Fund.*
- *Provide that the traditional methods of hunting, fishing, and harvesting wildlife are a right of the people, subject reasonable regulation by the General Assembly.*

CURRENT LAW & BILL ANALYSIS:

Eminent Domain

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 5th 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.¹ In addition, Section 1 of the 14th amendment to the United States Constitution provides that no state may "deprive any person of life, liberty, or property, without due process of law."

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.

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

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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.² State statutes, however, do authorize a jury trial on the issue of compensation for the taking of property. G.S. 40A-29, 136-109.

Part I of House Bill 3, 2015 Regular Session, would place a constitutional amendment on the November 2016 ballot to add a new section to the North Carolina Constitution that would provide private property cannot be taken for eminent domain except for a public use and that just compensation shall be paid and determined by a jury at the request of any party.

Section 1 of the PCS would, upon adoption of the constitutional amendment by the voters,:

- Amend 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."
- Modify 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.
- Amend 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.

Emergency Savings Reserve Fund

In 2006, Chapter 143C, State Budget Act, was enacted to simplify, reorganize, and update the budget statutes, conform the statutes to constitutional provisions governing appropriations, and make other changes. The purpose of the new Chapter 143C is to establish procedures for preparing the recommended State budget, enacting the budget, and administering the budget. Article 4 of that Chapter requires 25% of each year's ending General Fund balance be reserved to the Savings Reserve Account, and provides that the balance can be expended only through an act of appropriation.

Part II of House Bill 3, 2015 Regular Session, would place a constitutional amendment on the November 2016 ballot to add a new section to the North Carolina Constitution that would create a new constitutionally required Emergency Savings Reserve Fund. The General Assembly would be required to reserve 2% of the amount of appropriated each year to the Fund. Bills declining to make the required reserve, and bills appropriating money from the Emergency Savings Reserve Fund, would require a 2/3 vote of both houses. If approved by the voters, this would apply to fiscal years beginning on or after January 1, 2017.

Section 2 of the PCS would amend the statutory savings requirement to reflect the constitutionally required Emergency Savings Reserve Fund, if the voters approve the constitutional amendment.

Hunting, Fishing, and Harvesting Wildlife

The Wildlife Resources Commission is tasked with managing, restoring, developing, cultivating, conserving, protecting, and regulating the wildlife resources of the State of North Carolina, and with administering the laws relating to game, game and freshwater fishes.

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

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Part II of House Bill 3, 2015 Regular Session, would place a constitutional amendment on the November 2016 ballot to add a new section to the North Carolina Constitution that would provide a right to hunt, fish and harvest wildlife, using traditional methods subject to reasonable regulations by the General Assembly.

Section 3 of the PCS would clarify that the authorities exercised by the Wildlife Resources Commission are reasonable regulations of the right to hunt, fish, and harvest wildlife, if the voters approve the constitutional amendment.

EFFECTIVE DATE: Except as otherwise provided, effective when it becomes law.