

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 881 Session of
2005

INTRODUCED BY PICCOLA, BRIGHTBILL, WONDERLING, JUBELIRER,
LEMOND, RAFFERTY, EARLL, VANCE, D. WHITE, WOZNIAK, BROWNE,
PUNT, ROBBINS, REGOLA, TOMLINSON, CORMAN, M. WHITE, PIPPY,
WENGER, KASUNIC, MADIGAN, SCARNATI, THOMPSON, WAUGH, ORIE AND
BOSCOLA, OCTOBER 3, 2005

AS AMENDED ON THIRD CONSIDERATION, DECEMBER 7, 2005

AN ACT

1 Amending Title 26 (Eminent Domain) of the Pennsylvania
2 Consolidated Statutes, providing for limitations on the use
3 of eminent domain; and making a related repeal.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Title 26 of the Pennsylvania Consolidated
7 Statutes is amended by adding a chapter to read:

8 CHAPTER 2

9 LIMITATIONS ON USE OF EMINENT DOMAIN

10 Sec.

11 201. Short title of chapter.

12 202. Definitions.

13 203. Applicability.

14 204. Eminent domain for private business prohibited.

15 205. Blight.

16 206. Extraterritorial takings.

17 207. Eminent domain of agricultural property.

1 § 201. Short title of chapter.

2 This chapter shall be known and may be cited as the Property
3 Rights Protection Act.

4 § 202. Definitions.

5 The following words and phrases when used in this chapter
6 shall have the meanings given to them in this section unless the
7 context clearly indicates otherwise:

8 "Agricultural commodity." As defined under section 2 of the
9 act of June 10, 1982 (P.L.454, No.133), referred to as the
10 Right-to-Farm Law.

11 "Agricultural operation." A person engaged commercially in
12 the production of an agricultural commodity that has an
13 anticipated yearly gross income of at least \$2,000.

14 "Agricultural property." Property that is owned or operated
15 by an agricultural operation in the course of the operation's
16 production, harvesting or preparation for market of an
17 agricultural commodity. The term also includes any residential
18 dwelling or woodlot situated on the property.

19 "Commonwealth agency." As defined in 2 Pa.C.S. § 101
20 (relating to definitions).

21 "Condemnee." A person that owns property subject to the
22 exercise of the power of eminent domain by a condemnor.

23 "Condemnor." Any of the following which is authorized by law
24 to exercise the power of eminent domain:

25 (1) The Commonwealth, a Commonwealth agency or an
26 instrumentality or authority of the Commonwealth.

27 (2) A political subdivision, an agency of a political
28 subdivision or an instrumentality or authority of a political
29 subdivision.

30 (3) A public utility as defined in 66 Pa.C.S. § 102

(relating to definitions).

(4) A private entity.

(5) An electrical cooperative corporation under 15 Pa.C.S. Ch. 73 (relating to electric cooperative corporations).

"Eminent domain." The power of the Commonwealth to take private property for public use in return for just compensation.

"Private enterprise." A for-profit or not-for-profit entity or organization. This term does not include any entity or organization that meets the definition of an institution of purely public charity pursuant to the act of November 26, 1997 (P.L.508, No.55), known as the Institutions of Purely Public Charity Act.

"Redevelopment area." As defined in section 3(n) of the act of May 24, 1945 (P.L.991, No.385), known as the Urban Redevelopment Law.

"Unit of property." A parcel of real estate or condominium unit, including any interest in common elements with improvements thereon, if any, that is identified by a legal description in a recorded deed or a tax identification number.

§ 203. Applicability.

(a) Authority.--Except as set forth in subsection (b), the limitations and protections set forth in this chapter apply to the exercise of eminent domain by a condemnor.

(b) Exception.--This chapter does not affect any of the following:

(1) The jurisdiction or power of the Pennsylvania Public Utility Commission.

(2) Any statute providing for the assessment of benefits for public improvement on the properties benefited.

1 (3) The jurisdiction or power of the Philadelphia
2 Regional Port Authority to exercise eminent domain within a
3 designated port zone for a port facility as defined in the
4 act of July 10, 1989 (P.L.291, No.50), known as the
5 Philadelphia Regional Port Authority Act.

6 (4) THE EXERCISE OF EMINENT DOMAIN WITHIN A CITY OF THE <—
7 FIRST OR SECOND CLASS IN AREAS THAT WERE CERTIFIED, ON OR
8 BEFORE THE EFFECTIVE DATE OF THIS CHAPTER, AS BLIGHTED UNDER
9 SECTION 2 OF THE ACT OF MAY 24, 1945 (P.L.991, NO.385), KNOWN
10 AS THE URBAN REDEVELOPMENT LAW. THIS PARAGRAPH SHALL EXPIRE
11 DECEMBER 31, 2012.

12 (5) THE EXERCISE OF EMINENT DOMAIN BY A HOME RULE COUNTY
13 OF THE SECOND CLASS A, OR A MUNICIPALITY LOCATED THEREIN, IN
14 AREAS THAT WERE CERTIFIED, ON OR BEFORE THE EFFECTIVE DATE OF
15 THIS CHAPTER, AS BLIGHTED UNDER SECTION 2 OF THE URBAN
16 REDEVELOPMENT LAW. THIS PARAGRAPH SHALL EXPIRE DECEMBER 31,
17 2012.

18 (c) Construction.--Nothing in this chapter shall be deemed
19 to expand or enlarge the power of a condemnor to utilize eminent
20 domain.

21 § 204. Eminent domain for private business prohibited.

22 (a) Prohibition.--Except as set forth in subsection (b), the
23 exercise by any condemnor of the power of eminent domain to take
24 private property in order to use it for private enterprise is
25 prohibited.

26 (b) Exception.--Subsection (a) does not apply if any of the
27 following apply:

28 (1) ~~The~~ (I) THE condemnee consents to the use of the <—
29 property for private enterprise; OR <—

30 (II) THE CONDEMNEE DOES NOT FILE OR DOES NOT PREVAIL

1 ON PRELIMINARY OBJECTION FILED TO A DECLARATION OF TAKING
2 FOR THE ACQUISITION OF CONDEMNEE'S PROPERTY.

3 (2) The property is taken by, to the extent the party
4 has the power of eminent domain, transferred or leased to any
5 of the following:

6 (i) A common carrier, public utility or railroad as
7 defined in 66 Pa.C.S. § 102 (relating to definitions).

8 (ii) A private entity that occupies an incidental
9 area within a public project, such as retail space,
10 office space, restaurant and food service facility or
11 similar private entity.

12 (3) There is, on or associated with the property taken,
13 a threat to public health or safety. This paragraph includes
14 the following:

15 (i) Removal of a public nuisance.

16 (ii) Removal of a structure which is:

17 (A) beyond repair; or

18 (B) unfit for human habitation or use.

19 (4) The property taken is abandoned.

20 (5) The property taken meets the requirements of section
21 205 (relating to blight).

22 (6) The property taken is acquired by a condemnor
23 pursuant to section 12.1 of the act of May 24, 1945 (P.L.991,
24 No.385), known as the Urban Redevelopment Law.

25 (7) The property taken is acquired for the development
26 of low-income and mixed-income housing projects pursuant to
27 the act of May 28, 1937 (P.L.955, No.265), known as the
28 Housing Authorities Law, or to be developed using financial
29 incentives available for the development of low-income and
30 mixed-income housing projects under:

1 (i) section 42 of the Internal Revenue Code of 1986
2 (Public Law 99-514, 26 U.S.C. § 42);

3 (ii) the Housing and Community Development Act of
4 1974 (Public Law 93-383, 88 Stat. 633);

5 ~~(iii) the National Homeownership Trust Act (Public~~ <—
6 ~~Law 101-625, 104 Stat. 4129);~~

7 (III) THE CRANSTON-GONZALEZ NATIONAL AFFORDABLE <—
8 HOUSING ACT (PUBLIC LAW 101-625, 42 U.S.C. § 12701 ET
9 SEQ.);

10 (iv) 53 Pa.C.S. Ch. 60 (relating to optional
11 affordable housing funding);

12 (v) the Brownfields for Housing and Redevelopment
13 Assistance programs of the Department of Community and
14 Economic Development;

15 (vi) the Homeownership Choice Program of the
16 Pennsylvania Housing Finance Agency; and

17 (vii) any successor program to a program under this
18 paragraph.

19 (8) The property taken is acquired pursuant to the act
20 of June 25, 1999 (P.L.179, No.24), known as the Economic
21 Development Eminent Domain Law in order to allow for the
22 removal of blighted properties within the borders of a former
23 military facility located in a county of the second class A.

24 (9) The property is used or to be used for any road,
25 street, highway, trafficway or for property to be acquired to
26 provide access to a public thoroughfare for a property which
27 would be otherwise inaccessible as the result of the use of
28 eminent domain or for ingress, egress or parking of motor
29 vehicles.

30 § 205. Blight.

1 (a) Scope.--This section applies notwithstanding the act of
2 May 24, 1945 (P.L.991, No.385), known as the Urban Redevelopment
3 Law.

4 (b) Single property.--For purposes of acquiring a single
5 unit of property by eminent domain, a condemnor is authorized or
6 permitted to declare a property, either within or outside of a
7 redevelopment area, to be blighted only if the property is any
8 of the following:

9 (1) A premises which, because of physical condition or
10 use, is regarded as a public nuisance at common law or has
11 been declared a public nuisance in accordance with the
12 municipality housing, building, plumbing, fire or related
13 codes.

14 (2) A premises which, because of physical condition, use
15 or occupancy, is considered an attractive nuisance to
16 children. This paragraph includes an abandoned:

- 17 (i) well;
18 (ii) shaft;
19 (iii) basement;
20 (iv) excavation; or
21 (v) unsafe fence or structure.

22 (3) A dwelling which, because it is dilapidated,
23 unsanitary, unsafe, vermin-infested or lacking in the
24 facilities and equipment required by statute or an applicable
25 municipal code, has been designated by the agency responsible
26 for enforcement of the statute or code as unfit for human
27 habitation.

28 (4) A structure which is a fire hazard or is otherwise
29 dangerous to the safety of persons or property.

30 (5) A structure from which the utilities, plumbing,

1 heating, sewerage or other facilities have been disconnected,
2 destroyed, removed or rendered ineffective so that the
3 property is unfit for its intended use.

4 (6) Any vacant or unimproved lot or parcel of ground in
5 a predominantly built-up neighborhood which, by reason of
6 neglect or lack of maintenance, has become a place for
7 accumulation of trash and debris or a haven for rodents or
8 other vermin.

9 (7) An unoccupied property which has been tax delinquent
10 for a period of two years.

11 (8) A property which is vacant but not tax delinquent
12 and which has not been rehabilitated within one year of the
13 receipt of notice to rehabilitate from the appropriate
14 enforcement agency.

15 (9) An abandoned property. A property shall be
16 considered abandoned under this paragraph if it:

17 (i) is a vacant or unimproved lot or parcel of
18 ground on which a municipal lien for the cost of
19 demolition of a structure located on the property remains
20 unpaid for a period of six months;

21 (ii) is a vacant property or vacant or unimproved
22 lot or parcel of ground on which the total of municipal
23 liens on the property for tax or other type of claim of
24 the municipality is in excess of 150% of the fair market
25 value of the property as established by the Board of
26 Revisions of Taxes or other body with legal authority to
27 determine the taxable value of the property; or

28 (iii) has been declared abandoned by the owner,
29 including an estate that is in possession of the
30 property.

1 (10) A property which has defective or unusual
2 conditions of title or no known owners rendering title
3 unmarketable.

4 (11) A property which has environmentally hazardous
5 conditions, solid waste pollution or contamination in a
6 building or on the land which poses a direct and immediate
7 threat to the health, safety and welfare of the community.

8 (12) A PROPERTY HAVING THREE OR MORE OF THE FOLLOWING
9 CHARACTERISTICS:

10 (I) HAS UNSAFE OR HAZARDOUS CONDITIONS THAT DO NOT
11 MEET CURRENT USE, OCCUPANCY OR FIRE CODES;

12 (II) HAS UNSAFE EXTERNAL AND INTERNAL ACCESSWAYS;

13 (III) IS BEING SERVED BY AN UNSAFE PUBLIC STREET OR
14 RIGHT-OF-WAY;

15 (IV) VIOLATES THE APPLICABLE PROPERTY MAINTENANCE
16 CODE ADOPTED BY A MUNICIPALITY AND IS AN IMMEDIATE THREAT
17 TO PUBLIC HEALTH AND SAFETY;

18 (V) IS VACANT;

19 (VI) IS LOCATED IN A REDEVELOPMENT AREA WITH A
20 DENSITY OF AT LEAST 1,000 PEOPLE PER SQUARE MILE OR A
21 REDEVELOPMENT AREA WITH MORE THAN 90% OF THE UNITS OF
22 PROPERTY BEING NONRESIDENTIAL OR A MUNICIPALITY WITH A
23 DENSITY OF AT LEAST 2,500 PEOPLE PER SQUARE MILE.

24 (c) Multiple properties.--

25 ~~(1) For purposes of acquiring multiple units of property~~ <—
26 ~~by eminent domain, a condemnor is authorized or permitted to~~
27 ~~declare an area, either within or outside of a redevelopment~~
28 ~~area, to be blighted only if a majority of the units of~~
29 ~~property:~~

30 ~~(i) meet any of the requirements under subsection~~

1 ~~(b)(1) through (11); and~~

2 ~~(ii) represent a majority of the geographical area.~~

3 ~~(2) A condemnor may use eminent domain to acquire any~~
4 ~~unit of property within a blighted area so declared pursuant~~
5 ~~to this subsection.~~

6 (1) FOR PURPOSES OF ACQUIRING MULTIPLE UNITS OF PROPERTY <—
7 BY EMINENT DOMAIN, A CONDEMNOR IS AUTHORIZED OR PERMITTED TO
8 DECLARE AN AREA, EITHER WITHIN OR OUTSIDE OF A REDEVELOPMENT
9 AREA, TO BE BLIGHTED ONLY IF:

10 (I) A MAJORITY OF THE UNITS OF PROPERTY MEET ANY OF
11 THE REQUIREMENTS UNDER SUBSECTION (B) AND REPRESENT A
12 MAJORITY OF THE GEOGRAPHICAL AREA; OR

13 (II) PROPERTIES REPRESENTING A MAJORITY OF THE
14 GEOGRAPHICAL AREA MEET ONE OR MORE OF THE CONDITIONS SET
15 FORTH IN SUBSECTION (B)(1) THROUGH (11) OR SATISFY THE
16 CONDITIONS OF SUBSECTION (B)(12) THAT ARE NECESSARY FOR A
17 CONDEMNOR TO DECLARE THEM BLIGHTED UNDER SUBSECTION (B)
18 AND AT LEAST ONE-THIRD OF THE UNITS OF PROPERTY MEET TWO
19 OR MORE OF THE REQUIREMENTS UNDER SUBSECTION (B)(1)
20 THROUGH (11) OR SATISFY THE CONDITIONS OF SUBSECTION
21 (B)(12) AND ONE OR MORE OF THE REQUIREMENTS UNDER
22 SUBSECTION (B)(1) THROUGH (11).

23 (2) A CONDEMNOR MAY USE EMINENT DOMAIN TO ACQUIRE ANY
24 UNIT OF PROPERTY WITHIN A BLIGHTED AREA SO DECLARED PURSUANT
25 TO THIS SECTION.

26 (3) PROPERTIES OWNED BY THE CONDEMNOR WITHIN SUCH
27 GEOGRAPHICAL AREA MAY BE INCLUDED IN ANY CALCULATION OF
28 WHETHER SUCH UNITS CONSTITUTE A MAJORITY OF THE GEOGRAPHICAL
29 AREA UNDER THIS SUBSECTION.

30 (4) FOR PURPOSES OF THIS SUBSECTION, A BUILDING

1 CONTAINING MULTIPLE CONDOMINIUM UNITS SHALL BE TREATED AS ONE
2 UNIT OF PROPERTY.

3 (d) Redesignation.--If a condemnor seeks to add or enlarge a
4 blighted area, it must find that the area meets the requirements
5 of subsection (b) or (c) at the time of the addition or
6 enlargement.

7 (e) Expiration.--The declaration of a blighted area shall
8 expire after 20 years.

9 § 206. Extraterritorial takings.

10 No political subdivision shall exercise eminent domain
11 authority against land that is situated in another political
12 subdivision without the approval by resolution of the governing
13 body of the political subdivision in which the land is situated.

14 § 207. Eminent domain of agricultural property.

15 (a) Approval required.--Notwithstanding any provision of law
16 to the contrary, approval by the Agricultural Lands Condemnation
17 Approval Board shall be required prior to authority of any
18 agency of the Commonwealth or political subdivision or municipal
19 authority to exercise powers of eminent domain on agricultural
20 property. Approval shall be obtained in accordance with section
21 13 of the act of June 30, 1981 (P.L.128, No.43), known as the
22 Agricultural Area Security Law.

23 (b) Criteria for approval.--In addition to the criteria for
24 approval prescribed in other laws, the Agricultural Lands
25 Condemnation Approval Board shall consider and determine whether
26 the condemnor is authorized under this chapter to take the
27 property by eminent domain.

28 (c) Determination of blight.--The exercise of eminent domain
29 powers based on a condition of the agricultural property shall
30 not be authorized under section 205 (RELATING TO BLIGHT) unless

<—

1 the Agricultural Lands Condemnation Approval Board determines
2 the exercise is necessary to protect the health and safety of
3 the community.

4 (d) Disapproval.--The Agricultural Lands Condemnation
5 Approval Board shall disapprove the proposed condemnation if the
6 board determines the condemnor is not authorized under this
7 chapter to take the agricultural property by eminent domain.

8 Section 2. Repeals are as follows:

9 (1) The General Assembly declares that the repeal under
10 paragraph (2) is necessary to effectuate the addition of 26
11 Pa.C.S. § 205.

12 (2) As much of section 2 of the act of May 24, 1945
13 (P.L.991, No.385), known as the Urban Redevelopment Law, as
14 relates to condemnation of blighted premises and that is
15 inconsistent with this act, is repealed.

16 (3) All other acts and parts of acts are repealed
17 insofar as they are inconsistent with this act.

18 Section 3. (a) This act shall apply to the exercise of the
19 power of eminent domain on or after the effective date of this
20 section.

21 (b) For property acquired pursuant to 26 Pa.C.S. § 205, this
22 act shall not apply to units of property identified in a
23 redevelopment proposal approved by a governing body before the
24 effective date of this section.

25 Section 4. This act shall take effect in ~~60~~ 120 days.

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