
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 12

Session of
1993

INTRODUCED BY CORRIGAN, TRELLO, LEH, FARGO, PESCI AND LUCYK,
JANUARY 27, 1993

REFERRED TO COMMITTEE ON RULES, JANUARY 27, 1993

AN ACT

1 Imposing limitations on the use of eminent domain by
2 municipalities to obtain certain real estate or facilities;
3 providing for additional court proceedings; and making
4 repeals.

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

7 Section 1. Short title.

8 This act shall be known and may be cited as the Municipal
9 Eminent Domain Limitation Act.

10 Section 2. Definitions.

11 The following words and phrases when used in this act shall
12 have the meanings given to them in this section unless the
13 context clearly indicates otherwise:

14 "Authority." Any authority incorporated and operated under
15 the act of May 2, 1945 (P.L.382, No.164), known as the
16 Municipality Authorities Act of 1945.

17 "Condemning municipality." A municipality, first class
18 county or authority which desires to use eminent domain to

1 acquire real estate or a facility after obtaining court
2 approval.

3 "Court." The court of common pleas of the judicial district
4 where the real estate or facility which is subject to any
5 eminent domain proceedings under this act is located.

6 "Host municipality." A municipality where the real estate or
7 facility which is subject to an eminent domain proceeding under
8 this act is located.

9 "Municipality." Any city, borough, incorporated town,
10 township or home rule municipality within this Commonwealth.

11 Section 3. Scope.

12 The provisions of this act shall apply to every municipality,
13 every county and every authority within this Commonwealth,
14 except as otherwise provided in this act.

15 Section 4. Limitation on eminent domain power.

16 The power of a municipality, a county or an authority to
17 take, appropriate or acquire any real estate or any facility by
18 eminent domain for the creation, acquisition or operation of a
19 landfill, an incinerator, a resource recovery operation, a
20 sewage treatment facility or any other use or operation related
21 to the storage, processing, treatment or disposal of solid waste
22 or sewage shall not extend beyond the geographical boundaries of
23 the municipality, county or authority.

24 Section 5. Specific limitations and exceptions.

25 (a) Counties and cities of the first class.--

26 (1) Except as provided in paragraph (2), every county
27 and city of the first class shall comply with the provisions
28 of this section when utilizing eminent domain proceedings for
29 the creation, acquisition or operation of a landfill, an
30 incinerator, a resource recovery operation, a sewage

1 treatment facility or any other use or operation related to
2 the storage, processing, treatment or disposal of solid waste
3 or sewage.

4 (2) Upon receipt of court approval under section 6, a
5 county or city of the first class may exercise the power of
6 eminent domain to acquire real estate or facilities for the
7 purposes specified in section 4 beyond the geographical
8 boundaries of the county.

9 (b) Other counties.--All other counties and authorities
10 created by such counties shall comply with the provisions of
11 section 4 without exception.

12 (c) Municipalities.--

13 (1) Except as provided in paragraph (2), every
14 municipality shall comply with the provisions of section 4.

15 (2) Upon receipt of court approval under section 6, any
16 municipality may exercise the power of eminent domain to
17 acquire real estate or facilities for the purposes specified
18 in section 4 beyond the geographical boundaries of the
19 condemning municipality but not beyond the geographical
20 boundaries of the county in which the condemning municipality
21 is located.

22 (d) Municipal authorities.--Municipal authorities shall be
23 subject to the same specific limitations and exceptions that are
24 applicable to any or all of the incorporating municipalities
25 with the exception that the geographical boundaries of an
26 authority shall encompass the geographical boundaries of the
27 incorporating municipality or municipalities.

28 Section 6. Court proceedings.

29 (a) Jurisdiction.--Exclusive jurisdiction for all
30 proceedings under this act shall be vested in the court of

1 common pleas of the judicial district where the real estate or
2 facility which is subject to the eminent domain proceeding for
3 the creation, acquisition or operation of a landfill, an
4 incinerator, a resource recovery operation, a sewage treatment
5 facility or any other use or operation related to the storage,
6 processing, treatment or disposal of solid waste or sewage is
7 located. In the event the real estate or facility which is
8 subject to the eminent domain proceeding is located in two or
9 more contiguous judicial districts, the court of common pleas of
10 the judicial district in which the greatest portion of the total
11 real estate or facility subject to said proceedings is located
12 shall have exclusive jurisdiction for all proceedings under this
13 act. Approvals required by this act shall be obtained prior to
14 instituting any action under the act of June 22, 1964 (Sp.Sess,
15 P.L.84, No.6), known as the Eminent Domain Code.

16 (b) Burden of proof.--In order to obtain court approval, the
17 condemning municipality which desires to acquire real estate or
18 a facility outside of its geographical boundaries by eminent
19 domain shall establish, by clear and convincing evidence, that:

20 (1) There is no equally suitable property available
21 within the condemning municipality's boundaries for the
22 intended purpose.

23 (2) The proposed action would not impede the existing
24 land use plan of the host municipality.

25 In addition, the condemning municipality shall present economic,
26 ecological and land use impact studies regarding the impact on
27 the host municipality. The condemning municipality shall provide
28 copies of such studies to the court and host municipality at
29 least 90 days before hearing on the petition for court approval.

30 (c) Basis for decision.--After a hearing, the court shall

1 reach a decision by balancing the need of the condemning
2 municipality against the similar need of and the economic and
3 ecological impact on the host municipality. Upon presentation of
4 a petition for court approval under this act, the court may
5 appoint up to three persons as commissioners who shall be
6 severally sworn or affirmed, shall view the real estate or
7 facility proposed to be taken by eminent domain, shall review
8 the impact studies presented by the condemning municipality, and
9 shall report their recommendations to the court as soon
10 thereafter as possible. The report of the commissioners shall be
11 advisory only, and not binding upon the court. Each commissioner
12 shall receive such compensation for his services as the court
13 shall allow to be paid by the condemning municipality.

14 (d) Appeals.--Any appeal shall be to the Commonwealth Court.
15 The findings of fact of the court of common pleas shall be
16 binding on the appellate court in the absence of an abuse of
17 discretion by the court of common pleas.

18 Section 7. Imposition of conditions.

19 After receipt of court approval and the conclusion of
20 proceedings under the act of June 22, 1964 (Sp.Sess., P.L.84,
21 No.6), known as the Eminent Domain Code, the condemning
22 municipality and its successors in interest and assigns shall
23 comply with each of the following conditions in relation to an
24 eminent domain proceeding for the creation, acquisition or
25 operation of a landfill, an incinerator, a resource recovery
26 operation, a sewage treatment facility or any other use or
27 operation related to the storage, processing, treatment or
28 disposal of solid waste or sewage:

29 (1) The real estate or facility which is the subject of
30 the condemnation shall continue to be subject to the zoning

ordinances of the host municipality in accordance with the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code.

(2) The condemning municipality shall pay all real estate transfer taxes as if the acquisition of the property involved a private sale of that property.

(3) The condemning municipality shall make payments in lieu of taxes equal to the property tax that a private owner would pay to the host municipality, school district and county.

(4) The condemning municipality shall comply with all provisions of the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, and maintain all necessary permits at its expense.

(5) The host municipality shall be permitted to utilize the site and facility for any garbage or refuse collected within the host municipality by either municipal or private contractors operating under contract with the host municipality.

(6) The host municipality may place reasonable limits on the hours of operation of any site or facility by ordinance.

(7) The host municipality may impose a municipal service charge on dumping at the site or facility, which charge must be reasonably related to the additional cost to the host municipality for extra services necessitated by the existence of the site or facility.

(8) Any subsequent sale of any property taken by eminent domain by the condemning municipality shall be subject to all the conditions of taking stated in this section.

Section 8. Repeals.

1 The following acts and parts of acts are repealed insofar as
2 they are inconsistent with this act:

3 Section 1901 of the act of June 24, 1931 (P.L.1206, No.331),
4 known as The First Class Township Code.

5 Clause VIII of section 702 of the act of May 1, 1933
6 (P.L.103, No.69), known as The Second Class Township Code.

7 Section 11 of the act of May 2, 1945 (P.L.382, No.164), known
8 as the Municipality Authorities Act of 1945.

9 Section 2513 of the act of February 1, 1966 (1965 P.L.1656,
10 No.581), known as The Borough Code.

11 Section 9. Applicability.

12 This act shall apply to all proceedings for which a
13 declaration of taking is filed on or after the effective date of
14 this act.

15 Section 10. Effective date.

16 This act shall take effect in 30 days.