

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 881 Session of
2005

INTRODUCED BY PICCOLA, BRIGHTBILL, WONDERLING, JUBELIRER,
LEMMOND, 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

SENATOR THOMPSON, APPROPRIATIONS, RE-REPORTED AS AMENDED,
NOVEMBER 15, 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:

CHAPTER 2

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. Eminent domain in redevelopment areas.~~

16 205. BLIGHT.

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1 206. EXTRATERRITORIAL TAKINGS.

2 § 201. Short title of chapter.

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

5 § 202. Definitions.

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

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

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

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

15 (1) The Commonwealth, a Commonwealth agency or an
16 instrumentality or authority of the Commonwealth.

17 (2) A political subdivision, an agency of a political
18 subdivision or an instrumentality or authority of a political
19 subdivision.

20 (3) A public utility as defined in 66 Pa.C.S. § 102
21 (relating to definitions).

22 (4) A private entity.

23 (5) AN ELECTRICAL COOPERATIVE CORPORATION UNDER 15
24 PA.C.S. CH. 73 (RELATING TO ELECTRIC COOPERATIVE
25 CORPORATIONS).

26 "Eminent domain." The power of the Commonwealth to take
27 private property for public use in return for reasonable
28 compensation.

29 "PRIVATE ENTERPRISE." A FOR-PROFIT OR NOT-FOR-PROFIT ENTITY
30 OR ORGANIZATION. THIS TERM DOES NOT INCLUDE ANY ENTITY OR

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1 ORGANIZATION THAT MEETS THE DEFINITION OF AN INSTITUTION OF
2 PURELY PUBLIC CHARITY PURSUANT TO THE ACT OF NOVEMBER 26, 1997
3 (P.L.508, NO.55), KNOWN AS THE INSTITUTIONS OF PURELY PUBLIC
4 CHARITY ACT.

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

8 § 203. Applicability.

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

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

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

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

18 (3) THE ACT OF JUNE 10, 1982 (P.L.454, NO.133), REFERRED <—
19 TO AS THE RIGHT-TO-FARM LAW.

20 (C) CONSTRUCTION.--NOTHING IN THIS CHAPTER SHALL BE DEEMED
21 TO EXPAND OR ENLARGE THE POWER OF A CONDEMNOR TO UTILIZE EMINENT
22 DOMAIN.

23 § 204. Eminent domain for private business prohibited.

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

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

30 (1) The condemnee consents to the use of the property

1 for private ~~commercial~~ enterprise. <—

2 (2) The property ~~taken is~~ IS TAKEN BY, TO THE EXTENT THE <—
3 PARTY HAS THE POWER OF EMINENT DOMAIN, transferred or leased
4 to any of the following:

5 (i) A common carrier, PUBLIC UTILITY OR RAILROAD as <—
6 defined in 66 Pa.C.S. § 102 (relating to definitions).

7 (ii) A private entity that occupies an incidental
8 area within a public project, such as a ~~retail~~ <—
9 ~~establishment on the ground floor of a public building.~~
10 RETAIL SPACE, OFFICE SPACE, RESTAURANT AND FOOD SERVICE <—
11 FACILITY OR 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 ~~eminent domain in redevelopment areas~~ <—
22 BLIGHT). <—

23 (6) THE PROPERTY TAKEN IS ACQUIRED BY A CONDEMNOR <—
24 PURSUANT TO SECTION 12.1 OF THE ACT OF MAY 24, 1945 (P.L.991,
25 NO.385), KNOWN AS THE URBAN REDEVELOPMENT LAW.

26 (7) THE PROPERTY TAKEN IS ACQUIRED PURSUANT TO THE ACT
27 OF MAY 28, 1937 (P.L.955, NO.265), KNOWN AS THE HOUSING
28 AUTHORITIES LAW, OR SECTION 42 OF THE INTERNAL REVENUE CODE
29 OF 1986 (PUBLIC LAW 99-514, 26 U.S.C. § 42).

30 (8) THE PROPERTY TAKEN IS ACQUIRED PURSUANT TO THE ACT

OF JUNE 25, 1999 (P.L.179, NO.24), KNOWN AS THE ECONOMIC
DEVELOPMENT EMINENT DOMAIN LAW IN ORDER TO ALLOW FOR THE
REMOVAL OF BLIGHTED PROPERTIES WITHIN THE BORDERS OF A FORMER
MILITARY FACILITY LOCATED IN A COUNTY OF THE SECOND CLASS A.

§ 205. ~~Eminent domain in redevelopment areas~~ BLIGHT. <—

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

(b) Single property.--For purposes of acquiring a single
unit of property by eminent domain, a condemnor is authorized or
permitted to declare ~~an area~~ A PROPERTY, either within or <—
outside of a redevelopment area, to be blighted only if the
property is any of the following:

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

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

(i) well;

(ii) shaft;

(iii) basement;

(iv) excavation; or

(v) unsafe fence or structure.

(3) A dwelling which, because it is dilapidated,
unsanitary, unsafe, vermin-infested or lacking in the
facilities and equipment required by statute or an applicable
municipal code, has been designated by the agency responsible

1 for enforcement of the statute or code as unfit for human
2 habitation.

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

5 (5) A structure from which the utilities, plumbing,
6 heating, sewerage or other facilities have been disconnected,
7 destroyed, removed or rendered ineffective so that the
8 property is unfit for its intended use.

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

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

16 (8) A property which is vacant but not tax delinquent
17 and which has not been rehabilitated within one year of the
18 receipt of notice to rehabilitate from the appropriate
19 enforcement agency.

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

22 (i) is a vacant or unimproved lot or parcel of
23 ground on which a municipal lien for the cost of
24 demolition of a structure located on the property remains
25 unpaid for a period of six months;

26 (ii) is a vacant property or vacant or unimproved
27 lot or parcel of ground on which the total of municipal
28 liens on the property for tax or other type of claim of
29 the municipality is in excess of 150% of the fair market
30 value of the property as established by the Board of

Revisions of Taxes or other body with legal authority to
determine the taxable value of the property; or

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

(10) A PROPERTY WHICH HAS DEFECTIVE OR UNUSUAL
CONDITIONS OF TITLE OR NO KNOWN OWNERS RENDERING TITLE
UNMARKETABLE.

(11) A PROPERTY WHICH HAS ENVIRONMENTALLY HAZARDOUS
CONDITIONS, SOLID WASTE POLLUTION OR CONTAMINATION IN A
BUILDING OR ON THE LAND WHICH POSES A DIRECT AND IMMEDIATE
THREAT TO THE HEALTH, SAFETY AND WELFARE OF THE COMMUNITY.

(c) Multiple properties.--For purposes of acquiring multiple
units of property by eminent domain, a condemnor is authorized
or permitted to declare an area, either within or outside of a
redevelopment area, to be blighted only if a majority of the
units of property:

(1) meet any of the requirements under subsection (b)(1)
through ~~(9)~~ (11); and

(2) represent a majority of the geographical area.

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

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

§ 206. EXTRATERRITORIAL TAKINGS.

NO POLITICAL SUBDIVISION SHALL EXERCISE EMINENT DOMAIN
AUTHORITY AGAINST LAND THAT IS SITUATED IN ANOTHER POLITICAL
SUBDIVISION WITHOUT THE APPROVAL BY RESOLUTION OF THE GOVERNING

1 BODY OF THE POLITICAL SUBDIVISION IN WHICH THE LAND IS SITUATED.

2 Section 2. Repeals are as follows:

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

6 (2) As much of section 2 of the act of May 24, 1945
7 (P.L.991, No.385), known as the Urban Redevelopment Law, as
8 relates to condemnation of blighted ~~areas~~ PREMISES AND THAT <—
9 IS INCONSISTENT WITH THIS ACT, is repealed.

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

12 Section 3. This act shall apply to the exercise of the power
13 of eminent domain on or after the effective date of this
14 section.

15 Section 4. This act shall take effect in 60 days.