

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2468 Session of 2018

INTRODUCED BY KAMPF, HARPER, TOEPEL, BARRAR, CHARLTON, CORBIN, CORR, DRISCOLL, FARRY, LAWRENCE, MILLARD, B. MILLER, QUIGLEY, READSHAW, ROE, VITALI, STAATS, V. BROWN, MALONEY, BRIGGS, WATSON, COMMITTA, RAVENSTAHL, GILLEN, TAI, C. QUINN, DALEY, O'BRIEN AND DEAN, JUNE 6, 2018

AS REPORTED FROM COMMITTEE ON LOCAL GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 12, 2018

AN ACT

1 Amending Title 26 (Eminent Domain) of the Pennsylvania
2 Consolidated Statutes, in limitations on use of eminent
3 domain, further providing for definitions and providing for
4 eminent domain of land subject to conservation easement.

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

7 Section 1. Section 202 of Title 26 of the Pennsylvania
8 Consolidated Statutes is amended by adding definitions to read:

9 § 202. Definitions.

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

13 * * *

14 "Conservation easement." As defined under section 3 of the
15 act of June 22, 2001 (P.L.390, No.29), known as the Conservation
16 and Preservation Easements Act.

17 * * *

1 "Open space benefits." The benefits to the residents of the
2 Commonwealth and its local government units which result from
3 the preservation or restriction of the use of selected
4 predominantly undeveloped open spaces or areas, including, but
5 not limited to:

6 (1) the protection and conservation of water resources
7 and watersheds, by appropriate means, including, but not
8 limited to, preserving the natural cover, preventing floods
9 and soil erosion, protecting water quality and replenishing
10 surface and ground water supplies;

11 (2) the protection and conservation of forests and land
12 being used to produce timber crops;

13 (3) the protection and conservation of farmland;

14 (4) the protection of existing or planned park,
15 recreation or conservation sites;

16 (5) the protection and conservation of natural or scenic
17 resources, including, but not limited to, soils, beaches,
18 streams, flood plains, steep slopes or marshes;

19 (6) the protection of scenic areas for public visual
20 enjoyment from public rights of way;

21 (7) the preservation of sites of historic, geologic or
22 botanic interest; and

23 (8) the promotion of sound, cohesive and efficient land
24 development by preserving open spaces between communities.

25 * * *

26 Section 2. Title 26 is amended by adding a section to read:
27 § 208. Eminent domain of land subject to conservation easement.

28 (a) Approval required.--No agency of the Commonwealth,
29 political subdivision, authority, public utility or other body
30 having or exercising powers of eminent domain shall condemn any

1 land subject to a conservation easement for any purpose, unless
2 prior approval has been obtained from the orphans' court of the
3 county in which the land is located. The condemnation approval
4 specified by this subsection shall not be required for an
5 underground public utility facility that does not permanently
6 impact the open space benefits protected by the conservation
7 easement.

8 (b) Determination of blight.--The exercise of eminent domain
9 powers based on a condition of the land subject to a
10 conservation easement shall not be authorized under section 205
11 (relating to blight) unless the orphans' court determines the
12 exercise is necessary to protect the health and safety of the
13 community.

14 (c) Notice.--Any condemnor wishing to condemn property, the
15 approval for which is required under this section, shall, at
16 least 30 days prior to taking such action, notify the orphans'
17 court that the action is contemplated.

18 (d) Review.--The orphans' court shall review the proposed
19 condemnation and approve the proposed condemnation only if the
20 court determines there is no reasonable and prudent alternative
21 to the utilization of the land subject to a conservation
22 easement for the project.

23 (e) Findings and decisions.--The orphans' court shall render
24 findings and decisions of the court's review under subsection
25 (d) and shall report the findings and decisions to the proposed
26 condemnor.

27 (f) Injunctions.--The orphans' court may request the
28 Attorney General to bring an action to enjoin a condemnor from
29 violating any provision of this section.

30 (g) Emergencies exception.--This section shall not apply to

1 any emergency project which is immediately necessary for the
2 protection of life or property.

3 SECTION 3. THE PROVISIONS OF THIS ACT ARE SEVERABLE. IF ANY <--
4 PROVISION OF THIS ACT OR ITS APPLICATION TO ANY PERSON OR
5 CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY SHALL NOT AFFECT
6 OTHER PROVISIONS OR APPLICATIONS OF THIS ACT WHICH CAN BE GIVEN
7 EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION.

8 SECTION 4. THE FOLLOWING PROVISIONS SHALL APPLY TO A
9 CONDEMNATION FOR WHICH A DECLARATION OF TAKING IS FILED AFTER
10 DECEMBER 31, 2017:

11 (1) THE ADDITION OF THE DEFINITIONS OF "CONSERVATION
12 EASEMENT" AND "OPEN SPACE BENEFITS" IN 26 PA.C.S. § 202.

13 (2) THE ADDITION OF 26 PA.C.S. § 208.

14 Section 3 5. This act shall take effect ~~in 60 days~~ <--
15 IMMEDIATELY. <--