

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL  
No. 1602 Session of  
1987

INTRODUCED BY CORRIGAN, WIGGINS, HAYDEN, MELIO, PRESSMANN,  
BALDWIN, SHOWERS, DALEY, F. TAYLOR AND BARLEY, JUNE 25, 1987

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, JUNE 25, 1987

AN ACT

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

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16 The General Assembly of the Commonwealth of Pennsylvania  
17 hereby enacts as follows:

18 Section 1. Short title.

19 This act shall be known and may be cited as the Municipal

1 Eminent Domain Limitation Act.

2 Section 2. Definitions.

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

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

9 "Condemning municipality." A municipality, first class  
10 county or authority which desires to use eminent domain to  
11 acquire real estate or a facility after obtaining court  
12 approval.

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

16 "Host municipality." A municipality where the real estate or  
17 facility which is subject to an eminent domain proceeding under  
18 this act is located.

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

21 Section 3. Scope.

22 The provisions of this act shall apply to every municipality,  
23 every county and every authority within this Commonwealth  
24 without exception.

25 Section 4. Limitation on eminent domain power.

26 The power of a municipality, a county or an authority to  
27 take, appropriate or acquire any real estate or any facility by  
28 eminent domain for the creation, acquisition or operation of a  
29 landfill, an incinerator, a resource recovery operation, a  
30 sewage treatment facility or any other use or operation related

1 to the storage, processing, treatment or disposal of solid waste  
2 or sewage shall not extend beyond the geographical boundaries of  
3 the municipality, county or authority.

4 Section 5. Specific limitations and exceptions.

5 (a) Counties of the first class.--

6 (1) Except as provided in paragraph (2), every county of  
7 the first class shall comply with the provisions of section  
8 4.

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

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

17 (c) Municipalities.--

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

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

27 (d) Authorities.--Authorities shall be subject to the same  
28 specific limitations and exceptions that are applicable to any  
29 or all of the incorporating municipalities with the exception  
30 that the geographical boundaries of an authority shall encompass

1 the geographical boundaries of the incorporating municipality or  
2 municipalities.

3 Section 6. Court proceedings.

4 (a) Jurisdiction.--Exclusive jurisdiction for all  
5 proceedings under this act shall be vested in the court of  
6 common pleas of the judicial district where the real estate or  
7 facility which is subject to the eminent domain proceeding is  
8 located. In the event the real estate or facility which is  
9 subject to the eminent domain proceeding is located in two or  
10 more contiguous judicial districts, the court of common pleas of  
11 the judicial district in which the greatest portion of the total  
12 real estate or facility subject to said proceedings is located  
13 shall have exclusive jurisdiction for all proceedings under this  
14 act. Approvals required by this act shall be obtained prior to  
15 instituting any action under the act of June 22, 1964 (Sp.Sess,  
16 P.L.84, No.6), known as the Eminent Domain Code.

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

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

24 (2) The proposed action by the condemning municipality  
25 would cause no impairment of the water, air or soil quality  
26 of the host municipality.

27 (3) The proposed action would not impede the existing  
28 land use plan of the host municipality.

29 In addition, the condemning municipality shall present economic,  
30 ecological and land use impact studies regarding the impact on

1 the host municipality. The condemning municipality shall provide  
2 copies of such studies to the court and host municipality at  
3 least 90 days before hearing on the petition for court approval.

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

18 (d) Appeals.--Any appeal shall be to the Commonwealth Court.  
19 The findings of fact of the court of common pleas shall be  
20 binding on the appellate court in the absence of an abuse of  
21 discretion by the court of common pleas.

## 22 Section 7. Imposition of conditions.

23 After receipt of court approval and the conclusion of  
24 proceedings under the act of June 22, 1964 (Sp.Sess., P.L.84,  
25 No.6), known as the Eminent Domain Code, the condemning  
26 municipality and its successors in interest and assigns shall  
27 comply with each of the following conditions:

28 (1) The real estate or facility which is the subject of  
29 the condemnation shall continue to be subject to the zoning  
30 ordinances of the host municipality in accordance with the

1 act of July 31, 1968 (P.L.805, No.247), known as the  
2 Pennsylvania Municipalities Planning Code.

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

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

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

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

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

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

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

29 Section 8. Repeals.

30 The following acts and parts of acts are repealed insofar as

1 they are inconsistent with this act:

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

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

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

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

10 Section 9. Applicability.

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

14 Section 10. Effective date.

15 This act shall take effect in 30 days.