

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1357 Session of
1989

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AND BELARDI, MAY 1, 1989

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, MAY 1, 1989

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 repeals.

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16 The General Assembly of the Commonwealth of Pennsylvania

17 hereby enacts as follows:

18 Section 1. Short title.

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

3 Section 2. Definitions.

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

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

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

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

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

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

22 Section 3. Scope.

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

26 Section 4. Limitation on the eminent domain power.

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

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

5 Section 5. Specific limitations and exceptions.

6 (a) Counties.--All counties and authorities created by such
7 counties shall comply with the provisions of section 4 without
8 exception.

9 (b) Municipalities.--

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

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

19 (c) Authorities.--Authorities shall be subject to the same
20 specific limitations and exceptions that are applicable to any
21 or all of the incorporating municipalities with the exception
22 that the geographical boundaries of an authority shall encompass
23 the geographical boundaries of the incorporating municipality or
24 municipalities.

25 Section 6. Court proceedings.

26 (a) Jurisdiction.--Exclusive jurisdiction for all
27 proceedings under this act shall be vested in the court of
28 common pleas of the judicial district where the real estate or
29 facility which is subject to the eminent domain proceeding is
30 located. In the event the real estate or facility which is

1 subject to the eminent domain proceeding is located in two or
2 more contiguous judicial districts, the court of common pleas of
3 the judicial district in which the greatest portion of the total
4 real estate or facility subject to said proceedings is located
5 shall have exclusive jurisdiction for all proceedings under this
6 act. Approvals required by this act shall be obtained prior to
7 instituting any action under the act of June 22, 1964 (Sp.Sess,
8 P.L.84, No.6), known as the Eminent Domain Code.

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

13 (1) There is no suitable property available within the
14 condemning municipality's boundaries for the intended
15 purpose.

16 (2) The proposed action by the condemning municipality
17 would cause no impairment of the water, air or soil quality
18 of the host municipality.

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

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

26 (c) Basis for decision.--After a hearing, the court shall
27 reach a decision by balancing the need of the condemning
28 municipality against the similar need of and the economic and
29 ecological impact on the host municipality. Upon presentation of
30 a petition for court approval under this act, the court may

1 appoint up to three persons as commissioners, who shall be
2 severally sworn or affirmed and shall view the real estate or
3 facility proposed to be taken by eminent domain, shall review
4 the impact studies presented by the condemning municipality, and
5 shall report their recommendations to the court, as soon
6 thereafter as possible. The report of the commissioners shall be
7 advisory only, and not binding upon the court. Each commissioner
8 shall receive such compensation for his services as the court
9 shall allow to be paid by the condemning municipality.

10 (d) Appeals.--Any appeal shall be to the Commonwealth Court.
11 The findings of fact of the court of common pleas shall be
12 binding on the appellate court in the absence of an abuse of
13 discretion by the court of common pleas.

14 Section 7. Imposition of conditions.

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

20 (1) The real estate or facility which is the subject of
21 the condemnation shall continue to be subject to the zoning
22 ordinances of the host municipality in accordance with the
23 act of July 31, 1968 (P.L.805, No.247), known as the
24 Pennsylvania Municipalities Planning Code.

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

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

1 county.

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

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

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

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

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

21 Section 8. Repeals.

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

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

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

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

30 Section 2513 of the act of February 1, 1966 (1965 P.L.1656,

1 No.581), known as The Borough Code.

2 Section 9. Applicability.

3 This act shall apply to all proceedings for which a
4 declaration of taking is filed on or after the effective date of
5 this act.

6 Section 10. Effective date.

7 This act shall take effect in 30 days.