

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1361 Session of
2003

INTRODUCED BY CORRIGAN, HORSEY, LEDERER, LEWIS AND WASHINGTON,
MAY 6, 2003

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, MAY 6, 2003

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." An 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, or 53 Pa.C.S. Ch. 56
17 (relating to municipal authorities).

18 "Condemning municipality." A municipality, first class

1 county or authority which desires to use eminent domain to
2 acquire real estate or a facility after obtaining court
3 approval.

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

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

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

12 Section 3. Scope.

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

16 Section 4. Limitation on eminent domain power.

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

25 Section 5. Specific limitations and exceptions.

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

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

1 landfill, an incinerator, a resource recovery operation, a
2 sewage treatment facility or any other use or operation
3 related to the storage, processing, treatment or disposal of
4 solid waste or sewage.

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

10 (b) Other counties.--Each county, other than a county of the
11 first class, and an authority created by that county shall
12 comply with the provisions of section 4 without exception.

13 (c) Municipalities.--

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

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

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

29 Section 6. Court proceedings.

30 (a) Jurisdiction.--

1 (1) Exclusive jurisdiction for all proceedings under
2 this act shall be vested in the court of common pleas of the
3 judicial district where the real estate or facility which is
4 subject to the eminent domain proceeding for the creation,
5 acquisition or operation of a landfill, an incinerator, a
6 resource recovery operation, a sewage treatment facility or
7 any other use or operation related to the storage,
8 processing, treatment or disposal of solid waste or sewage is
9 located.

10 (2) In the event the real estate or facility which is
11 subject to the eminent domain proceeding is located in two or
12 more contiguous judicial districts, the court of common pleas
13 of the judicial district in which the greatest portion of the
14 total real estate or facility subject to said proceedings is
15 located shall have exclusive jurisdiction for all proceedings
16 under this act.

17 (3) Approvals required by this act shall be obtained
18 prior to instituting any action under the act of June 22,
19 1964 (Sp.Sess, P.L.84, No.6), known as the Eminent Domain
20 Code.

21 (b) Burden of proof.--In order to obtain court approval, the
22 condemning municipality which desires to acquire real estate or
23 a facility outside of its geographical boundaries by eminent
24 domain shall:

25 (1) Establish, by clear and convincing evidence, that:

26 (i) There is no equally suitable property
27 available within the condemning municipality's boundaries
28 for the intended purpose.

29 (ii) The proposed action would not impede the
30 existing land use plan of the host municipality.

1 (2) Present economic, ecological and land use impact
2 studies regarding the impact on the host municipality and
3 provide copies of such studies to the court and host
4 municipality at least 90 days before hearing on the petition
5 for court approval.

6 (c) Basis for decision.--

7 (1) After a hearing, the court shall reach a decision by
8 balancing the need of the condemning municipality against the
9 similar need of and the economic and ecological impact on the
10 host municipality.

11 (2) Upon presentation of a petition for court approval
12 under this act, the court may appoint up to three persons as
13 commissioners who shall be severally sworn or affirmed, shall
14 view the real estate or facility proposed to be taken by
15 eminent domain, review the impact studies presented by the
16 condemning municipality, and report their recommendations to
17 the court as soon thereafter as possible. The report of the
18 commissioners shall be advisory only, and not binding upon
19 the court.

20 (3) Each commissioner shall receive such compensation
21 for the commissioner's services as the court shall allow to
22 be paid by the condemning municipality.

23 (d) Appeals.--Any appeal from the court of common pleas
24 shall be to the Commonwealth Court. The findings of fact of the
25 court of common pleas shall be binding on the appellate court in
26 the absence of an abuse of discretion by the court of common
27 pleas.

28 Section 7. Imposition of conditions.

29 After receipt of court approval and the conclusion of
30 proceedings under the act of June 22, 1964 (Sp.Sess., P.L.84,

No.6), known as the Eminent Domain Code, the condemning municipality and its successors in interest and assigns shall comply with each of the following conditions in relation to an eminent domain proceeding for the creation, acquisition or operation of a landfill, an incinerator, a resource recovery operation, a sewage treatment facility or any other use or operation related to the storage, processing, treatment or disposal of solid waste or sewage:

(1) The real estate or facility which is the subject of 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

1 the hours of operation of any site or facility by ordinance.

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

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

10 Section 8. Repeals.

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

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

15 Article XXI of the act of May 1, 1933, (P.L.103, No.69),
16 known as The Second Class Township Code.

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

19 53 Pa.C.S. § 5615.

20 Section 9. Applicability.

21 This act shall apply to all proceedings for which a
22 declaration of taking is filed on or after the effective date of
23 this act.

24 Section 10. Effective date.

25 This act shall take effect in 30 days.