

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 881 Session of
2005

INTRODUCED BY PICCOLA, BRIGHTBILL, WONDERLING, JUBELIRER,
LEMOND, 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

AS AMENDED ON THIRD CONSIDERATION, DECEMBER 5, 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. Blight.

16 206. Extraterritorial takings.

17 207. EMINENT DOMAIN OF AGRICULTURAL PROPERTY.

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1 § 201. Short title of chapter.

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

4 § 202. Definitions.

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

8 "AGRICULTURAL COMMODITY." AS DEFINED UNDER SECTION 2 OF THE <—
9 ACT OF JUNE 10, 1982 (P.L.454, NO.133), REFERRED TO AS THE
10 RIGHT-TO-FARM LAW.

11 "AGRICULTURAL OPERATION." A PERSON ENGAGED COMMERCIALY IN
12 THE PRODUCTION OF AN AGRICULTURAL COMMODITY THAT HAS AN
13 ANTICIPATED YEARLY GROSS INCOME OF AT LEAST \$2,000.

14 "AGRICULTURAL PROPERTY." PROPERTY THAT IS OWNED OR OPERATED
15 BY AN AGRICULTURAL OPERATION IN THE COURSE OF THE OPERATION'S
16 PRODUCTION, HARVESTING OR PREPARATION FOR MARKET OF AN
17 AGRICULTURAL COMMODITY. THE TERM ALSO INCLUDES ANY RESIDENTIAL
18 DWELLING OR WOODLOT SITUATED ON THE PROPERTY.

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

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

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

25 (1) The Commonwealth, a Commonwealth agency or an
26 instrumentality or authority of the Commonwealth.

27 (2) A political subdivision, an agency of a political
28 subdivision or an instrumentality or authority of a political
29 subdivision.

30 (3) A public utility as defined in 66 Pa.C.S. § 102

1 (relating to definitions).

2 (4) A private entity.

3 (5) An electrical cooperative corporation under 15
4 Pa.C.S. Ch. 73 (relating to electric cooperative
5 corporations).

6 "Eminent domain." The power of the Commonwealth to take
7 private property for public use in return for ~~reasonable~~ JUST <—
8 compensation.

9 "Private enterprise." A for-profit or not-for-profit entity
10 or organization. This term does not include any entity or
11 organization that meets the definition of an institution of
12 purely public charity pursuant to the act of November 26, 1997
13 (P.L.508, No.55), known as the Institutions of Purely Public
14 Charity Act.

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

18 "UNIT OF PROPERTY." A PARCEL OF REAL ESTATE OR CONDOMINIUM <—
19 UNIT, INCLUDING ANY INTEREST IN COMMON ELEMENTS WITH
20 IMPROVEMENTS THEREON, IF ANY, THAT IS IDENTIFIED BY A LEGAL
21 DESCRIPTION IN A RECORDED DEED OR A TAX IDENTIFICATION NUMBER.

22 § 203. Applicability.

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

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

28 (1) The jurisdiction or power of the Pennsylvania Public
29 Utility Commission.

30 (2) Any statute providing for the assessment of benefits

1 for public improvement on the properties benefited.

2 ~~(3) The act of June 10, 1982 (P.L.454, No.133), referred <—~~
3 ~~to as the Right to Farm Law.~~

4 (3) THE JURISDICTION OR POWER OF THE PHILADELPHIA <—
5 REGIONAL PORT AUTHORITY TO EXERCISE EMINENT DOMAIN WITHIN A
6 DESIGNATED PORT ZONE FOR A PORT FACILITY AS DEFINED IN THE
7 ACT OF JULY 10, 1989 (P.L.291, NO.50), KNOWN AS THE
8 PHILADELPHIA REGIONAL PORT AUTHORITY ACT.

9 (c) Construction.--Nothing in this chapter shall be deemed
10 to expand or enlarge the power of a condemnor to utilize eminent
11 domain.

12 § 204. Eminent domain for private business prohibited.

13 (a) Prohibition.--Except as set forth in subsection (b), the
14 exercise by any condemnor of the power of eminent domain to take
15 private property in order to use it for private enterprise is
16 prohibited.

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

19 (1) The condemnee consents to the use of the property
20 for private enterprise.

21 (2) The property is taken by, to the extent the party
22 has the power of eminent domain, transferred or leased to any
23 of the following:

24 (i) A common carrier, public utility or railroad as
25 defined in 66 Pa.C.S. § 102 (relating to definitions).

26 (ii) A private entity that occupies an incidental
27 area within a public project, such as retail space,
28 office space, restaurant and food service facility or
29 similar private entity.

30 (3) There is, on or associated with the property taken,

1 a threat to public health or safety. This paragraph includes
2 the following:

3 (i) Removal of a public nuisance.

4 (ii) Removal of a structure which is:

5 (A) beyond repair; or

6 (B) unfit for human habitation or use.

7 (4) The property taken is abandoned.

8 (5) The property taken meets the requirements of section
9 205 (relating to blight).

10 (6) The property taken is acquired by a condemnor
11 pursuant to section 12.1 of the act of May 24, 1945 (P.L.991,
12 No.385), known as the Urban Redevelopment Law.

13 ~~(7) The property taken is acquired pursuant to the act~~ <—
14 ~~of May 28, 1937 (P.L.955, No.265), known as the Housing~~
15 ~~Authorities Law, or section 42 of the Internal Revenue Code~~
16 ~~of 1986 (Public Law 99-514, 26 U.S.C. § 42).~~

17 (7) THE PROPERTY TAKEN IS ACQUIRED FOR THE DEVELOPMENT <—
18 OF LOW-INCOME AND MIXED-INCOME HOUSING PROJECTS PURSUANT TO
19 THE ACT OF MAY 28, 1937 (P.L.955, NO.265), KNOWN AS THE
20 HOUSING AUTHORITIES LAW, OR TO BE DEVELOPED USING FINANCIAL
21 INCENTIVES AVAILABLE FOR THE DEVELOPMENT OF LOW-INCOME AND
22 MIXED-INCOME HOUSING PROJECTS UNDER:

23 (I) SECTION 42 OF THE INTERNAL REVENUE CODE OF 1986
24 (PUBLIC LAW 99-514, 26 U.S.C. § 42);

25 (II) THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF
26 1974 (PUBLIC LAW 93-383, 88 STAT. 633);

27 (III) THE NATIONAL HOMEOWNERSHIP TRUST ACT (PUBLIC
28 LAW 101-625, 104 STAT. 4129);

29 (IV) 53 PA.C.S. CH. 60 (RELATING TO OPTIONAL
30 AFFORDABLE HOUSING FUNDING);

1 (V) THE BROWNFIELDS FOR HOUSING AND REDEVELOPMENT
2 ASSISTANCE PROGRAMS OF THE DEPARTMENT OF COMMUNITY AND
3 ECONOMIC DEVELOPMENT;

4 (VI) THE HOMEOWNERSHIP CHOICE PROGRAM OF THE
5 PENNSYLVANIA HOUSING FINANCE AGENCY; AND

6 (VII) ANY SUCCESSOR PROGRAM TO A PROGRAM UNDER THIS
7 PARAGRAPH.

8 (8) The property taken is acquired pursuant to the act
9 of June 25, 1999 (P.L.179, No.24), known as the Economic
10 Development Eminent Domain Law in order to allow for the
11 removal of blighted properties within the borders of a former
12 military facility located in a county of the second class A.

13 (9) THE PROPERTY IS USED OR TO BE USED FOR ANY ROAD, <—
14 STREET, HIGHWAY, TRAFFICWAY OR FOR PROPERTY TO BE ACQUIRED TO
15 PROVIDE ACCESS TO A PUBLIC THOROUGHFARE FOR A PROPERTY WHICH
16 WOULD BE OTHERWISE INACCESSIBLE AS THE RESULT OF THE USE OF
17 EMINENT DOMAIN OR FOR INGRESS, EGRESS OR PARKING OF MOTOR
18 VEHICLES.

19 § 205. Blight.

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

23 (b) Single property.--For purposes of acquiring a single
24 unit of property by eminent domain, a condemnor is authorized or
25 permitted to declare a property, either within or outside of a
26 redevelopment area, to be blighted only if the property is any
27 of the following:

28 (1) A premises which, because of physical condition or
29 use, is regarded as a public nuisance at common law or has
30 been declared a public nuisance in accordance with the

1 municipality housing, building, plumbing, fire or related
2 codes.

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

6 (i) well;

7 (ii) shaft;

8 (iii) basement;

9 (iv) excavation; or

10 (v) unsafe fence or structure.

11 (3) A dwelling which, because it is dilapidated,
12 unsanitary, unsafe, vermin-infested or lacking in the
13 facilities and equipment required by statute or an applicable
14 municipal code, has been designated by the agency responsible
15 for enforcement of the statute or code as unfit for human
16 habitation.

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

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

23 (6) Any vacant or unimproved lot or parcel of ground in
24 a predominantly built-up neighborhood which, by reason of
25 neglect or lack of maintenance, has become a place for
26 accumulation of trash and debris or a haven for rodents or
27 other vermin.

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

30 (8) A property which is vacant but not tax delinquent

1 and which has not been rehabilitated within one year of the
2 receipt of notice to rehabilitate from the appropriate
3 enforcement agency.

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

6 (i) is a vacant or unimproved lot or parcel of
7 ground on which a municipal lien for the cost of
8 demolition of a structure located on the property remains
9 unpaid for a period of six months;

10 (ii) is a vacant property or vacant or unimproved
11 lot or parcel of ground on which the total of municipal
12 liens on the property for tax or other type of claim of
13 the municipality is in excess of 150% of the fair market
14 value of the property as established by the Board of
15 Revisions of Taxes or other body with legal authority to
16 determine the taxable value of the property; or

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

20 (10) A property which has defective or unusual
21 conditions of title or no known owners rendering title
22 unmarketable.

23 (11) A property which has environmentally hazardous
24 conditions, solid waste pollution or contamination in a
25 building or on the land which poses a direct and immediate
26 threat to the health, safety and welfare of the community.

27 ~~(c) Multiple properties. For purposes of acquiring multiple~~ <—

28 (C) MULTIPLE PROPERTIES.-- <—

29 (1) FOR PURPOSES OF ACQUIRING MULTIPLE units of property
30 by eminent domain, a condemnor is authorized or permitted to

1 declare an area, either within or outside of a redevelopment
2 area, to be blighted only if a majority of the units of
3 property:

4 ~~(1) meet any of the requirements under subsection (b)(1)~~ <—
5 ~~through (11); and~~

6 ~~(2) represent a majority of the geographical area.~~

7 (I) MEET ANY OF THE REQUIREMENTS UNDER SUBSECTION <—

8 (B)(1) THROUGH (11); AND

9 (II) REPRESENT A MAJORITY OF THE GEOGRAPHICAL AREA.

10 (2) A CONDEMNOR MAY USE EMINENT DOMAIN TO ACQUIRE ANY
11 UNIT OF PROPERTY WITHIN A BLIGHTED AREA SO DECLARED PURSUANT
12 TO THIS SUBSECTION.

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

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

19 § 206. Extraterritorial takings.

20 No political subdivision shall exercise eminent domain
21 authority against land that is situated in another political
22 subdivision without the approval by resolution of the governing
23 body of the political subdivision in which the land is situated.

24 § 207. EMINENT DOMAIN OF AGRICULTURAL PROPERTY. <—

25 (A) APPROVAL REQUIRED.--NOTWITHSTANDING ANY PROVISION OF LAW
26 TO THE CONTRARY, APPROVAL BY THE AGRICULTURAL LANDS CONDEMNATION
27 APPROVAL BOARD SHALL BE REQUIRED PRIOR TO AUTHORITY OF ANY
28 AGENCY OF THE COMMONWEALTH OR POLITICAL SUBDIVISION OR MUNICIPAL
29 AUTHORITY TO EXERCISE POWERS OF EMINENT DOMAIN ON AGRICULTURAL
30 PROPERTY. APPROVAL SHALL BE OBTAINED IN ACCORDANCE WITH SECTION

1 13 OF THE ACT OF JUNE 30, 1981 (P.L.128, NO.43), KNOWN AS THE
2 AGRICULTURAL AREA SECURITY LAW.

3 (B) CRITERIA FOR APPROVAL.--IN ADDITION TO THE CRITERIA FOR
4 APPROVAL PRESCRIBED IN OTHER LAWS, THE AGRICULTURAL LANDS
5 CONDEMNATION APPROVAL BOARD SHALL CONSIDER AND DETERMINE WHETHER
6 THE CONDEMNOR IS AUTHORIZED UNDER THIS CHAPTER TO TAKE THE
7 PROPERTY BY EMINENT DOMAIN.

8 (C) DETERMINATION OF BLIGHT.--THE EXERCISE OF EMINENT DOMAIN
9 POWERS BASED ON A CONDITION OF THE AGRICULTURAL PROPERTY SHALL
10 NOT BE AUTHORIZED UNDER SECTION 205 UNLESS THE AGRICULTURAL
11 LANDS CONDEMNATION APPROVAL BOARD DETERMINES THE EXERCISE IS
12 NECESSARY TO PROTECT THE HEALTH AND SAFETY OF THE COMMUNITY.

13 (D) DISAPPROVAL.--THE AGRICULTURAL LANDS CONDEMNATION
14 APPROVAL BOARD SHALL DISAPPROVE THE PROPOSED CONDEMNATION IF THE
15 BOARD DETERMINES THE CONDEMNOR IS NOT AUTHORIZED UNDER THIS
16 CHAPTER TO TAKE THE AGRICULTURAL PROPERTY BY EMINENT DOMAIN.

17 Section 2. Repeals are as follows:

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

21 (2) As much of section 2 of the act of May 24, 1945
22 (P.L.991, No.385), known as the Urban Redevelopment Law, as
23 relates to condemnation of blighted premises and that is
24 inconsistent with this act, is repealed.

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

27 Section 3. (A) This act shall apply to the exercise of the <—
28 power of eminent domain on or after the effective date of this
29 section.

30 (B) FOR PROPERTY ACQUIRED PURSUANT TO 26 PA.C.S. § 205, THIS <—

1 ACT SHALL NOT APPLY TO UNITS OF PROPERTY IDENTIFIED IN A
2 REDEVELOPMENT PROPOSAL APPROVED BY A GOVERNING BODY BEFORE THE
3 EFFECTIVE DATE OF THIS SECTION.

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