

EMINENT DOMAIN (26 PA.C.S.) - EMINENT DOMAIN OF LAND SUBJECT
TO CONSERVATION EASEMENT

Act of Jun. 24, 2018, P.L. 345, No. 45

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No. 2018-45

HB 2468

AN ACT

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

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

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

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

* * *

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

* * *

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

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

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

(3) the protection and conservation of farmland;

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

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

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

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

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

* * *

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

(a) Approval required.--Except as provided in subsection (g), no political subdivision, authority, public utility or other body having or exercising powers of eminent domain shall condemn any land subject to a conservation easement for any purpose, unless prior approval has been obtained from the

orphans' court of the county in which the land is located. The condemnation approval specified by this subsection shall not be required for an underground public utility facility that does not permanently impact the open space benefits protected by the conservation easement. The condemnation approval specified by this subsection shall not be required for any public utility facility or other project that is subject to approval by a Federal agency, the necessity for the propriety and environmental effects of which has been reviewed and ratified or approved by the Pennsylvania Public Utility Commission or the Federal Energy Regulatory Commission, regardless of whether the right to establish and maintain such underground or other public utility facility is obtained by condemnation or by agreement with the owner.

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

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

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

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

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

(g) Exceptions.--This section shall not apply to any of the following:

(1) Emergency projects where, in the discretion of the condemning entity, the taking is reasonably necessary for the protection of life or property.

(2) Condemnations by an agency of the Commonwealth for any purpose.

Section 3. The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

Section 4. The following provisions shall apply to a condemnation for which a declaration of taking is filed after December 31, 2017:

(1) The addition of the definitions of "conservation easement" and "open space benefits" in 26 Pa.C.S. § 202.

(2) The addition of 26 Pa.C.S. § 208.

Section 5. This act shall take effect immediately.

APPROVED--The 24th day of June, A.D. 2018.

TOM WOLF