
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 504 Session of
1989

INTRODUCED BY CORRIGAN, DALEY, CAWLEY, PISTELLA, LAUGHLIN AND
VEON, FEBRUARY 15, 1989

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, FEBRUARY 15, 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 certain 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." Any 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.

17 "Condemning municipality." A municipality, first class
18 county or authority which desires to use eminent domain to
19 acquire real estate or a facility after obtaining court

1 approval.

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

5 "Host municipality." A municipality where the real estate or
6 facility which is subject to an eminent domain proceeding under
7 this act is located.

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

10 Section 3. Scope.

11 The provisions of this act shall apply to every municipality,
12 every county and every authority within this Commonwealth
13 without exception.

14 Section 4. Limitation on eminent domain power.

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

23 Section 5. Specific limitations and exceptions.

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

25 (1) Except as provided in paragraph (2), every county of
26 the first class shall comply with the provisions of section
27 4.

28 (2) Upon receipt of court approval under section 6, a
29 county of the first class may exercise the power of eminent
30 domain to acquire real estate or facilities for the purposes

specified in section 4 beyond the geographical boundaries of the county.

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

(c) Municipalities.--

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

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

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

Section 6. Court proceedings.

(a) Jurisdiction.--Exclusive jurisdiction for all proceedings under this act shall be vested in the court of common pleas of the judicial district where the real estate or facility which is subject to the eminent domain proceeding is located. In the event the real estate or facility which is subject to the eminent domain proceeding is located in two or more contiguous judicial districts, the court of common pleas of the judicial district in which the greatest portion of the total

1 real estate or facility subject to said proceedings is located
2 shall have exclusive jurisdiction for all proceedings under this
3 act. Approvals required by this act shall be obtained prior to
4 instituting any action under the act of June 22, 1964 (Sp.Sess,
5 P.L.84, No.6), known as the Eminent Domain Code.

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

10 (1) There is no suitable property available within the
11 condemning municipality's boundaries for the intended
12 purpose.

13 (2) The proposed action by the condemning municipality
14 would cause no impairment of the water, air or soil quality
15 of the host municipality.

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

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

23 (c) Basis for decision.--After a hearing, the court shall
24 reach a decision by balancing the need of the condemning
25 municipality against the similar need of and the economic and
26 ecological impact on the host municipality. Upon presentation of
27 a petition for court approval under this act, the court may
28 appoint up to three persons as commissioners who shall be
29 severally sworn or affirmed, shall view the real estate or
30 facility proposed to be taken by eminent domain, shall review

1 the impact studies presented by the condemning municipality, and
2 shall report their recommendations to the court as soon
3 thereafter as possible. The report of the commissioners shall be
4 advisory only, and not binding upon the court. Each commissioner
5 shall receive such compensation for his services as the court
6 shall allow to be paid by the condemning municipality.

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

11 Section 7. Imposition of conditions.

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

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

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

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

29 (4) The condemning municipality shall comply with all
30 provisions of the act of July 7, 1980 (P.L.380, No.97), known

1 as the Solid Waste Management Act, and maintain all necessary
2 permits at its expense.

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

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

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

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

18 Section 8. Repeals.

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

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

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

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

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

29 Section 9. Applicability.

30 This act shall apply to all proceedings for which a

1 declaration of taking is filed on or after the effective date of
2 this act.

3 Section 10. Effective date.

4 This act shall take effect in 30 days.