

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2151 Session of  
2003

INTRODUCED BY WALKO, HABAY, STURLA, READSHAW, DENLINGER,  
FABRIZIO, GERGELY, GOODMAN, HORSEY, KIRKLAND, KOTIK,  
LAUGHLIN, TANGRETTI, THOMAS, YOUNGBLOOD AND FRANKEL,  
NOVEMBER 10, 2003

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, NOVEMBER 10, 2003

AN ACT

1 Amending the act of July 28, 1953 (P.L.723, No.230), entitled,  
2 as amended, "An act relating to counties of the second class  
3 and second class A; amending, revising, consolidating and  
4 changing the laws relating thereto," further providing for  
5 eminent domain.

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

8 Section 1. Section 2601 of the act of July 28, 1953  
9 (P.L.723, No.230), known as the Second Class County Code,  
10 amended July 25, 1961 (P.L.854, No.370), is amended to read:

11 Section 2601. Eminent Domain; County May Enter Upon Land, Et  
12 Cetera.--(a) In all cases where the power of eminent domain is  
13 conferred upon the county by law, the county may enter upon,  
14 appropriate, take, injure or destroy private lands, property or  
15 material. Any such taking for the purpose of originally laying  
16 out or opening of any road shall be in fee simple.

17 (b) (1) Notwithstanding any other provision of law, this  
18 section includes the right of second class counties to take air

1 rights for transportation uses over or alongside railroad tracks  
2 and other railroad property adjacent to the railroad tracks and  
3 to construct support structures over and on the property  
4 pursuant to this subsection. The following shall apply:

5 (i) Prior to initiating an action in condemnation, a second  
6 class county must engage in good faith efforts to purchase the  
7 air rights and to enter into agreements regarding the  
8 construction of support structures on railroad property related  
9 to transportation projects.

10 (ii) Condemnation and use of air rights must be effected in  
11 a manner which provides a vertical separation between structures  
12 built over railroad property for transportation uses and the  
13 railroad property used in active railroad operations not less  
14 than:

15 (A) that required to accommodate double-stack container  
16 railcars; or

17 (B) the greater of any of the following requirements:

18 (I) The requirements of the Federal Railroad Administration.

19 (II) The requirements of the Federal Highway Administration  
20 or any successor agency or department applicable to Federal-aid  
21 highways.

22 (III) The requirements of the Pennsylvania Department of  
23 Transportation.

24 (2) Notwithstanding any other provision of law, this section  
25 includes the right of second class counties to take certain  
26 property subject to the ownership and/or control of railroads  
27 for transportation uses through the exercise of the power of  
28 eminent domain pursuant to this subsection. No action taken  
29 pursuant to this subsection shall interfere with railroad  
30 operations on adjacent tracks within any right of way or other

1 property retained by a railroad. Prior to initiating an action  
2 in condemnation, a second class county must engage in good faith  
3 efforts to enter into an agreement with the railroad to vest  
4 ownership and control of the property in the second class  
5 county.

6 (3) Notwithstanding any other provision of law, whenever in  
7 the construction, reconstruction, widening or relocation of any  
8 street, highway, bridge or tunnel, or of any part thereof, it  
9 becomes necessary or appropriate to occupy part of the right of  
10 way or other property of any railroad company, a second class  
11 county may enter upon and occupy part of the right of way for  
12 the purpose of the highway, bridge or tunnel, or part thereof  
13 pursuant to this subsection. The railroad shall provide for the  
14 relocation upon its remaining right of way or other property any  
15 structures and facilities of the railroad located upon, in,  
16 under or above the original right of way or other property at  
17 the time the original right of way or other property is  
18 occupied. No action taken pursuant to this subsection shall  
19 interfere with railroad operations on adjacent tracks within any  
20 right of way or other property retained by a railroad. A second  
21 class county is authorized to enter into agreements with a  
22 railroad company to provide for compensation for the expense of  
23 transfer or reconstruction under this paragraph.

24 (4) In connection with the exercise of its power of eminent  
25 domain to take the property of a railroad pursuant to this  
26 subsection or to exercise other powers granted pursuant to this  
27 subsection, a second class county is empowered to take action  
28 and to commence proceedings as may be necessary or appropriate  
29 to confirm that a condemnation action or relocation pursuant to  
30 this subsection is not preempted by Federal law or to establish

1 the conditions under which a railroad line or other railroad  
2 property would be subject to condemnation action or relocation  
3 free of Federal jurisdiction. Such actions and proceedings may  
4 include the filing by the county of an action with the Surface  
5 Transportation Board or any successor Federal agency or  
6 department having Federal jurisdiction over railroads, for the  
7 purpose of:

8 (i) effecting the adverse abandonment of railroad property;  
9 or

10 (ii) obtaining a declaratory order from the Surface  
11 Transportation Board or any successor Federal agency or  
12 department that the proposed condemnation or relocation would  
13 not be preempted by Federal law.

14 (5) Upon the acquisition of interests in property in  
15 accordance with this subsection, a second class county shall be  
16 authorized to enter into agreements with the Commonwealth or its  
17 political subdivisions to provide for the transfer of the  
18 property for transportation uses upon the receipt of appropriate  
19 consideration sufficient to compensate the second class county  
20 for its costs of acquisition and related costs and expenses.

21 (6) For the purposes of this subsection, the following words  
22 and phrases shall have the meanings given to them in this  
23 paragraph unless the context clearly indicates otherwise:

24 "Support structure," means a structure built as a result of  
25 the obtaining of air rights over or alongside railroad tracks  
26 and other railroad property obtained pursuant to paragraph (1).

27 "Transportation uses," means the development and construction  
28 of structures, facilities and other transportation  
29 infrastructure the purpose of which is to enable and to  
30 facilitate the movement of people, goods or both, including

1 motor vehicle traffic, pedestrian traffic and bicycle traffic.

2 Section 2. This act shall take effect in 60 days.