
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, HOUSE OF REPRESENTATIVES,
APRIL 24, 2006

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:

8 CHAPTER 2

9 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.

1 206. Extraterritorial takings.

2 207. Eminent domain of agricultural property.

3 § 201. Short title of chapter.

4 This chapter shall be known and may be cited as the Property
5 Rights Protection Act.

6 § 202. Definitions.

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

10 "Agricultural commodity." As defined under section 2 of the
11 act of June 10, 1982 (P.L.454, No.133), referred to as the
12 Right-to-Farm Law.

13 "Agricultural operation." A person engaged commercially in
14 the production of an agricultural commodity that has an
15 anticipated yearly gross income of at least ~~\$2,000~~ \$10,000. <—

16 "Agricultural property." Property that is owned or operated
17 by an agricultural operation in the course of the operation's
18 production, harvesting or preparation for market of an
19 agricultural commodity. The term also includes any residential
20 dwelling or woodlot situated on the property.

21 "COMMON CARRIER." ANY AND ALL PERSONS OR CORPORATIONS <—
22 HOLDING OUT, OFFERING, OR UNDERTAKING, DIRECTLY OR INDIRECTLY,
23 SERVICE FOR COMPENSATION TO THE PUBLIC FOR THE TRANSPORTATION OF
24 PASSENGERS OR PROPERTY, OR BOTH, OR ANY CLASS OF PASSENGERS OR
25 PROPERTY, BY, THROUGH, OVER, ABOVE OR UNDER LAND, WATER OR AIR,
26 AND SHALL INCLUDE FORWARDERS, BUT SHALL NOT INCLUDE CONTRACT
27 CARRIERS BY MOTOR VEHICLES, OR BROKERS, OR ANY BONA FIDE
28 COOPERATIVE ASSOCIATION TRANSPORTING PROPERTY EXCLUSIVELY FOR
29 THE MEMBERS OF SUCH ASSOCIATION ON A NONPROFIT BASIS.

30 "Commonwealth agency." As defined in 2 Pa.C.S. § 101

1 (relating to definitions).

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

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

6 (1) The Commonwealth, a Commonwealth agency or an
7 instrumentality or authority of the Commonwealth.

8 (2) A political subdivision, an agency of a political
9 subdivision or an instrumentality or authority of a political
10 subdivision.

11 (3) A public utility as defined in 66 Pa.C.S. § 102
12 (relating to definitions).

13 (4) A private entity.

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

17 "Eminent domain." The power of the Commonwealth to take
18 private property for public use in return for just compensation.

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

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

28 "Unit of property." A parcel of real estate or condominium
29 unit, including any interest in common elements with
30 improvements thereon, if any, that is identified by a legal

1 description in a recorded deed or a tax identification number.

2 § 203. Applicability.

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

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

8 (1) The jurisdiction or power of the Pennsylvania Public
9 Utility Commission.

10 (2) Any statute providing for the assessment of benefits
11 for public improvement on the properties benefited.

12 (3) The jurisdiction or power of the Philadelphia
13 Regional Port Authority to exercise eminent domain within a
14 designated port zone for a port facility as defined in the
15 act of July 10, 1989 (P.L.291, No.50), known as the
16 Philadelphia Regional Port Authority Act.

17 (4) The exercise of eminent domain within a city of the
18 first or second class in areas that were certified, on or
19 before the effective date of this chapter, as blighted under
20 section 2 of the act of May 24, 1945 (P.L.991, No.385), known
21 as the Urban Redevelopment Law. This paragraph shall expire
22 December 31, 2012.

23 (5) The exercise of eminent domain by a home rule county
24 of the second class A, or a municipality located therein, in
25 areas that were certified, on or before the effective date of
26 this chapter, as blighted under section 2 of the Urban
27 Redevelopment Law. This paragraph shall expire December 31,
28 2012.

29 (6) THE EXERCISE OF EMINENT DOMAIN WITHIN A HOME RULE
30 MUNICIPALITY BY A COUNTY OF THE SECOND CLASS A IN AREAS THAT

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WERE CERTIFIED, ON OR BEFORE THE EFFECTIVE DATE OF THIS
CHAPTER, AS BLIGHTED UNDER SECTION 2 OF THE URBAN
REDEVELOPMENT LAW. THIS PARAGRAPH SHALL EXPIRE DECEMBER 31,
2012.

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

§ 204. Eminent domain for private business prohibited.

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

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

(1) (i) the condemnee consents to the use of the
property for private enterprise; or

(ii) the condemnee does not file or does not prevail
on preliminary objection filed to a declaration of taking
for the acquisition of condemnee's property.

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

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

~~(ii) A private entity~~ (II) A COMMON CARRIER.

(III) A PRIVATE ENTERPRISE that occupies an
incidental area within a public project, such as retail
space, office space, restaurant and food service facility
or similar ~~private entity~~ INCIDENTAL AREA.

(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 THIS PARAGRAPH DOES NOT INCLUDE ACTIVITIES AND STRUCTURES FOR <—
8 WHICH NUISANCE ACTIONS ARE PROHIBITED UNDER SECTION 4 OF THE
9 ACT OF JUNE 10, 1982 (P.L.454, NO.133), REFERRED TO AS THE
10 RIGHT-TO-FARM LAW.

11 (4) The property taken is abandoned.

12 (5) The property taken meets the requirements of section
13 205 (relating to blight).

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

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 Cranston-Gonzalez National Affordable
28 Housing Act (Public Law 101-625, 42 U.S.C. § 12701 et
29 seq.);

30 (iv) 53 Pa.C.S. Ch. 60 (relating to optional

1 affordable housing funding);

2 (v) the Brownfields for Housing and Redevelopment
3 Assistance programs of the Department of Community and
4 Economic Development;

5 (vi) the Homeownership Choice Program AND THE
6 PENNHOMES PROGRAM of the Pennsylvania Housing Finance
7 Agency; and

8 (vii) any successor program to a program under this
9 paragraph.

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

15 (9) The property is used or to be used for any road,
16 street, highway, trafficway or for property to be acquired to
17 provide access to a public thoroughfare for a property which
18 would be otherwise inaccessible as the result of the use of
19 eminent domain or for ingress, egress or parking of motor
20 vehicles.

21 § 205. Blight.

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

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

30 (1) A premises which, because of physical condition or

1 use, is regarded as a public nuisance at common law or has
2 been declared a public nuisance in accordance with the
3 municipality housing, building, plumbing, fire or related
4 codes.

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

8 (i) well;

9 (ii) shaft;

10 (iii) basement;

11 (iv) excavation; or

12 (v) unsafe fence or structure.

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

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

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

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

30 (7) An unoccupied property which has been tax delinquent

1 for a period of two years.

2 (8) A property which is vacant but not tax delinquent
3 and which has not been rehabilitated within one year of the
4 receipt of notice to rehabilitate from the appropriate
5 enforcement agency.

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

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

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

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

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

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

29 (12) A property having three or more of the following
30 characteristics:

1 (i) has unsafe or hazardous conditions that do not
2 meet current use, occupancy or fire codes;

3 (ii) has unsafe external and internal accessways;

4 (iii) is being served by an unsafe public street or
5 right-of-way;

6 (iv) violates the applicable property maintenance
7 code adopted by a municipality and is an immediate threat
8 to public health and safety;

9 (v) is vacant;

10 (vi) is located in a redevelopment area with a
11 density of at least 1,000 people per square mile or a
12 redevelopment area with more than 90% of the units of
13 property being nonresidential or a municipality with a
14 density of at least 2,500 people per square mile.

15 (c) Multiple properties.--

16 (1) For purposes of acquiring multiple units of property
17 by eminent domain, a condemnor is authorized or permitted to
18 declare an area, either within or outside of a redevelopment
19 area, to be blighted only if:

20 (i) a majority of the units of property meet any of
21 the requirements under subsection (b) and represent a
22 majority of the geographical area; or

23 (ii) properties representing a majority of the
24 geographical area meet one or more of the conditions set
25 forth in subsection (b)(1) through (11) or satisfy the
26 conditions of subsection (b)(12) that are necessary for a
27 condemnor to declare them blighted under subsection (b)
28 and at least one-third of the units of property meet two
29 or more of the requirements under subsection (b)(1)
30 through (11) or satisfy the conditions of subsection

1 (b)(12) and one or more of the requirements under
2 subsection (b)(1) through (11).

3 (2) A condemnor may use eminent domain to acquire any
4 unit of property within a blighted area so declared pursuant
5 to this section.

6 (3) Properties owned by the condemnor within such
7 geographical area may be included in any calculation of
8 whether such units constitute a majority of the geographical
9 area under this subsection.

10 (4) For purposes of this subsection, a building
11 containing multiple condominium units shall be treated as one
12 unit of property.

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~~ (A) GENERAL RULE.--EXCEPT AS SET FORTH IN SUBSECTION (B), <—
21 NO political subdivision shall exercise eminent domain authority
22 against land that is situated in another political subdivision
23 without the approval by resolution of the governing body of the
24 political subdivision in which the land is situated.

25 (B) EXCEPTIONS.--THIS SECTION SHALL NOT APPLY TO ANY OF THE <—
26 FOLLOWING:

27 (1) A SCHOOL DISTRICT WHICH EXERCISES EMINENT DOMAIN
28 AUTHORITY AGAINST PROPERTY LOCATED WITHIN ITS GEOGRAPHIC
29 BOUNDARIES.

30 (2) AN AUTHORITY FORMED UNDER 53 PA.C.S. CH. 56

(RELATING TO MUNICIPAL AUTHORITIES) WHICH EXERCISES EMINENT
DOMAIN AUTHORITY AGAINST PROPERTY LOCATED WITHIN ITS
GEOGRAPHIC BOUNDARIES.

(3) THE EXERCISE OF EMINENT DOMAIN AUTHORITY UNDER 74
PA.C.S. § 5920 (RELATING TO ACQUISITION OF AIR RIGHTS).

§ 207. Eminent domain of agricultural property.

~~(a) Approval required. Notwithstanding any provision of law
to the contrary, approval by the Agricultural Lands Condemnation
Approval Board shall be required prior to authority of any
agency of the Commonwealth or political subdivision or municipal
authority to exercise powers of eminent domain on agricultural
property. Approval shall be obtained in accordance with section
13 of the act of June 30, 1981 (P.L.128, No.43), known as the
Agricultural Area Security Law.~~

~~(b) Criteria for approval. In addition to the criteria for
approval prescribed in other laws, the Agricultural Lands
Condemnation Approval Board shall consider and determine whether
the condemnor is authorized under this chapter to take the
property by eminent domain.~~

~~(c) Determination of blight. The exercise of eminent domain
powers based on a condition of the agricultural property shall
not be authorized under section 205 (relating to blight) unless
the Agricultural Lands Condemnation Approval Board determines
the exercise is necessary to protect the health and safety of
the community.~~

~~(d) Disapproval. The Agricultural Lands Condemnation
Approval Board shall disapprove the proposed condemnation if the
board determines the condemnor is not authorized under this
chapter to take the agricultural property by eminent domain.~~

(RESERVED).

1 Section 2. Repeals are as follows:

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

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

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

11 Section 3. (a) This act shall apply to the exercise of the
12 power of eminent domain on or after the effective date of this
13 section.

14 (b) For property acquired pursuant to 26 Pa.C.S. § 205, this
15 act shall not apply to units of property identified in a
16 redevelopment proposal approved by a governing body before the
17 effective date of this section.

18 Section 4. This act shall take effect in 120 days.