

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2468 Session of 2018

INTRODUCED BY KAMPF, HARPER, TOEPEL, BARRAR, CHARLTON, CORBIN, CORR, DRISCOLL, FARRY, LAWRENCE, MILLARD, B. MILLER, QUIGLEY, READSHAW, ROE, VITALI, STAATS, V. BROWN, MALONEY, BRIGGS, WATSON, COMITTA, RAVENSTAHL, GILLEN, TAI, C. QUINN, DALEY, O'BRIEN, DEAN, PHILLIPS-HILL, M. QUINN, MURT, DAVIS, SANTORA AND J. McNEILL, JUNE 6, 2018

AS AMENDED ON SECOND CONSIDERATION, IN SENATE, JUNE 21, 2018

AN ACT

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

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

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

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

13 * * *

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

1 * * *

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

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

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

14 (3) the protection and conservation of farmland;

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

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

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

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

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

26 * * *

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

29 (a) Approval required.--No agency of the Commonwealth, <--
30 EXCEPT AS PROVIDED IN SUBSECTION (G), NO political subdivision, <--

1 authority, public utility or other body having or exercising
2 powers of eminent domain shall condemn any land subject to a
3 conservation easement for any purpose, unless prior approval has
4 been obtained from the orphans' court of the county in which the
5 land is located. The condemnation approval specified by this
6 subsection shall not be required for an underground public
7 utility facility that does not permanently impact the open space
8 benefits protected by the conservation easement. THE <--
9 CONDEMNATION APPROVAL SPECIFIED BY THIS SUBSECTION SHALL NOT BE
10 REQUIRED FOR ANY PUBLIC UTILITY FACILITY OR OTHER PROJECT THAT
11 IS SUBJECT TO APPROVAL BY A FEDERAL AGENCY, THE NECESSITY FOR
12 THE PROPRIETY AND ENVIRONMENTAL EFFECTS OF WHICH HAS BEEN
13 REVIEWED AND RATIFIED OR APPROVED BY THE PENNSYLVANIA PUBLIC
14 UTILITY COMMISSION OR THE FEDERAL ENERGY REGULATORY COMMISSION,
15 REGARDLESS OF WHETHER THE RIGHT TO ESTABLISH AND MAINTAIN SUCH
16 UNDERGROUND OR OTHER PUBLIC UTILITY FACILITY IS OBTAINED BY
17 CONDEMNATION OR BY AGREEMENT WITH THE OWNER.

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

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

28 (d) Review.--The orphans' court shall review the proposed
29 condemnation and approve the proposed condemnation only if the
30 court determines there is no reasonable and prudent alternative

1 to the utilization of the land subject to a conservation
2 easement for the project.

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

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

10 ~~(g) Emergencies exception.--This section shall not apply to~~ <--
11 ~~any emergency project which is immediately necessary for the~~
12 ~~protection of life or property. EXCEPTIONS.--THIS SECTION SHALL~~ <--
13 NOT APPLY TO ANY OF THE FOLLOWING:

14 (1) EMERGENCY PROJECTS WHERE, IN THE DISCRETION OF THE
15 CONDEMNING ENTITY, THE TAKING IS REASONABLY NECESSARY FOR THE
16 PROTECTION OF LIFE OR PROPERTY.

17 (2) CONDEMNATIONS BY AN AGENCY OF THE COMMONWEALTH FOR
18 ANY PURPOSE.

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

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

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

29 (2) The addition of 26 Pa.C.S. § 208.

30 Section 5. This act shall take effect immediately.