
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2538 Session of
2024

INTRODUCED BY PROBST, PIELLI, HILL-EVANS, GIRAL, KENYATTA,
RADER, STEELE, KHAN, ROZZI, BURGOS, BOROWSKI AND OTTEN,
AUGUST 21, 2024

REFERRED TO COMMITTEE ON STATE GOVERNMENT, AUGUST 21, 2024

AN ACT

1 Amending Title 26 (Eminent Domain) of the Pennsylvania
2 Consolidated Statutes, in general provisions, further
3 providing for definitions; in procedure to condemn, further
4 providing for declaration of taking, for security required
5 and for recording notice of condemnation, providing for
6 advanced notice to condemnee and further providing for notice
7 to condemnee, for preliminary objections, for possession,
8 right of entry and payment of compensation and for revocation
9 of condemnation proceedings; in procedure for determining
10 damages, further providing for petition for appointment of
11 viewers, for report of viewers, for allocation of damages and
12 for liens and distribution of damages; in just compensation
13 and measure of damages, further providing for measure of
14 damages, for condemnee's costs where no declaration of taking
15 filed and for limited reimbursement of appraisal, attorney
16 and engineering fees and providing for coverage of mortgages
17 and liens and for compensation for loss of goodwill of
18 business or farm operation; and, in evidence, providing for
19 proof of continuous ownership.

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

22 Section 1. The definition of "comparable replacement
23 dwelling" in section 103 of Title 26 of the Pennsylvania
24 Consolidated Statutes is amended and the section is amended by
25 adding definitions to read:

26 § 103. Definitions.

1 Subject to additional definitions contained in subsequent
2 provisions of this title which are applicable to specific
3 provisions of this title, the following words and phrases when
4 used in this title shall have the meanings given to them in this
5 section unless the context clearly indicates otherwise:

6 * * *

7 "Blighted property." The term shall have the same meaning as
8 the term "abandoned property" in section 3 of the act of
9 November 26, 2008 (P.L.1672, No.135), known as the Abandoned and
10 Blighted Property Conservatorship Act.

11 * * *

12 "Comparable replacement dwelling." A dwelling that is:

- 13 (1) Decent, safe and sanitary.
- 14 (2) Adequate in size to accommodate the occupants.
- 15 (3) Within the financial means of the displaced person.
- 16 (4) Functionally equivalent.
- 17 (5) In an area not subject to unreasonable adverse
18 environmental conditions.
- 19 (6) In a location generally not less desirable than the
20 location of the displaced person's dwelling with respect to
21 public utilities, facilities, services and the displaced
22 person's place of employment.

23 (7) Within the same school district as the condemned
24 dwelling if any of the occupants in the condemned dwelling is
25 a child that, at the time of condemnation, attends a school
26 within the school district in which the condemned dwelling is
27 located.

28 * * *

29 "Continuous ownership." A continuous and unbroken chain of
30 ownership of a property by a condemnee and the family of the

1 condemnee as provided under section 1107 (relating to proof of
2 continuous ownership).

3 * * *

4 "Marginalized community." A group of people who experience
5 social, economic or political exclusion or discrimination based
6 on characteristics such as race, ethnicity, gender, sexual
7 orientation, socioeconomic status, disability or religion.

8 * * *

9 "Replacement value." A valuation that is calculated as the
10 summation of the following:

11 (1) The value of the land as if the land was vacant.

12 (2) The cost of replacing or duplicating existing
13 structures on the land, including machinery, equipment or
14 fixtures, adjusting for depreciation.

15 * * *

16 Section 2. Sections 302, 303(a) and 304(a)(1) of Title 26
17 are amended to read:

18 § 302. Declaration of taking.

19 (a) Condemnation and passage of title.--

20 (1) Condemnation under the power of condemnation given
21 by law to a condemnor shall be effected [**only by**] when, after
22 the filing in court of a declaration of taking with the
23 security required under section 303(a) (relating to security
24 required), the determination of last resort is made under
25 subsection (f).

26 (2) The title which the condemnor acquires in the
27 property condemned shall pass to the condemnor on the date of
28 [**the filing**] the court determining last resort under
29 subsection (f), and the condemnor shall be entitled to
30 possession under section 307 (relating to possession, right

1 of entry and payment of compensation).

2 (b) Contents.--The declaration of taking shall be in writing
3 and executed by the condemnor following the determination of
4 last resort by the court under subsection (f) and shall be
5 captioned as a proceeding in rem and contain the following:

6 (1) The name and address of the condemnor.

7 (2) A specific reference to the statute and section
8 under which the condemnation is authorized.

9 (3) A specific reference to the action, whether by
10 ordinance, resolution or otherwise, by which the declaration
11 of taking was authorized, including the date when the action
12 was taken and the place where the record may be examined.

13 (4) A brief description of the purpose of the
14 condemnation.

15 (5) A description of the property condemned, sufficient
16 for identification, specifying the municipal corporation and
17 the county or counties where the property taken is located, a
18 reference to the place of recording in the office of the
19 recorder of deeds of plans showing the property condemned or
20 a statement that plans showing the property condemned are on
21 the same day being lodged for record or filed in the office
22 of the recorder of deeds in the county in accordance with
23 section 304 (relating to recording notice of condemnation).

24 (6) A statement of the nature of the title acquired, if
25 any.

26 (7) A statement specifying where a plan showing the
27 condemned property may be inspected in the county in which
28 the property taken is located.

29 (8) A statement of how just compensation has been made
30 or secured.

1 (b.1) Additional content requirements.--If the property
2 condemned is not a blighted property, the declaration of taking
3 shall also contain the following:

4 (1) The alternatives that were considered, including:

5 (i) Alternatives that did not involve the use of
6 eminent domain for the program or project.

7 (ii) Alternatives that involve the use of eminent
8 domain but condemn fewer properties.

9 (iii) Alternatives that involve the use of eminent
10 domain but would not disproportionately affect a
11 marginalized community.

12 (2) A statement outlining why the specified exercise of
13 the power of eminent domain to take private property is the
14 only feasible option among the alternatives. The statement
15 shall include the following:

16 (i) Evidence that the condemnor fully considered if
17 the benefits of the program or project outweigh the
18 negative impacts of the exercise of the power of eminent
19 domain to take private property on the surrounding
20 community.

21 (ii) Evidence that the exercise of the power of
22 eminent domain to take private property would not
23 exacerbate existing inequities in the surrounding
24 community.

25 (3) Evidence that a comparable replacement dwelling is
26 available to the condemnee.

27 (c) More than one property included in declaration.--The
28 condemnor may include in one declaration of taking any or all of
29 the properties specified in the action by which the declaration
30 of taking was authorized.

1 (d) Fee.--The prothonotary shall charge one fee for filing
2 each declaration of taking, which shall be the same regardless
3 of the number of properties or condemnees included.

4 (e) Filing.--The condemnor shall file within one year of the
5 action authorizing the declaration of taking a declaration of
6 taking covering all properties included in the authorization not
7 otherwise acquired by the condemnor within this time.

8 (f) Determination of last resort.--

9 (1) Within 30 days after the receipt of a declaration of
10 taking, the court shall determine whether the condemnor
11 sufficiently demonstrates that the exercise of the power of
12 eminent domain to take private property is the last resort.
13 The court shall grant determination of last resort if the
14 following are satisfied:

15 (i) The condemnor demonstrates the condemnor fully
16 considered if the benefits of the program or project
17 outweigh the negative impacts of the exercise of the
18 power of eminent domain to take private property on the
19 surrounding community.

20 (ii) The condemnor demonstrates the exercise of the
21 power of eminent domain to take private property would
22 not disproportionately affect a marginalized community.

23 (iii) The condemnor demonstrates that the exercise
24 of the power of eminent domain to take private property
25 outlined in the declaration of taking is the only
26 feasible option among the alternatives considered.

27 (iv) The condemnor demonstrates that a comparable
28 replacement dwelling is available to the condemnee.

29 (2) The court shall make the determination by
30 considering the content provided by the condemnor under

1 subsection (b.1).

2 (3) Immediately after the court determines that the
3 exercise of the power of eminent domain to take private
4 property is the last resort, the declaration of taking shall
5 go into effect.

6 (4) If the court determines that the exercise of power
7 of eminent domain to take private property is not the last
8 resort, the court shall provide a statement to the condemnor
9 outlining why the determination was not granted and provide
10 the condemnor 30 days to remedy any insufficiencies.

11 (g) Condemnation of blighted property.--If the condemned
12 property is a blighted property, the following apply:

13 (1) When filing a declaration of taking, the condemnor
14 shall exclude the content as provided under subsection (b.1)
15 in the declaration of taking.

16 (2) The condemnation of blighted property shall not
17 require a determination of last resort as provided under
18 subsection (f).

19 (3) The title which the condemnor acquires in the
20 property condemned shall pass to the condemnor on the date of
21 the filing and the condemnor shall be entitled to possession
22 under section 307.

23 (4) (i) The just compensation for blighted property
24 shall be as provided in section 702(a)(1) (relating to
25 measure of damages).

26 (ii) The blighted property shall not be eligible for
27 augmentation of just compensation as provided in section
28 702(d).

29 (iii) The blighted property shall not be eligible
30 for coverage of mortgages and liens as provided in

1 section 711.1 (relating to coverage of mortgages and
2 liens).

3 (iv) The blighted property shall not be eligible for
4 compensation for loss of goodwill under section 717
5 (relating to compensation for loss of goodwill of
6 business or farm operation).

7 § 303. Security required.

8 (a) Bond.--Except as provided in subsection (b), every
9 condemnor shall give security to effect the condemnation, after
10 a court determines that the exercise of the power of eminent
11 domain to take private property is the last resort, by filing
12 with the declaration of taking its bond, without surety, to the
13 Commonwealth for the use of the owner of the property interests
14 condemned, the condition of which shall be that the condemnor
15 shall pay the damages determined by law.

16 * * *

17 § 304. Recording notice of condemnation.

18 (a) County of recording.--

19 (1) The condemnor, upon [filing its declaration of
20 taking] the court determining that the exercise of the power
21 of eminent domain to take private property is the last
22 resort, shall on the same day lodge for record a notice of
23 the declaration in the office of the recorder of deeds of the
24 county in which the property is located.

25 * * *

26 Section 3. Title 26 is amended by adding a section to read:

27 § 304.1. Advanced notice to condemnee.

28 (a) Written advanced notice.--Within 30 days prior to the
29 filing of a declaration of taking, the acquiring agency shall
30 provide written notice to a proposed condemnee, mortgagee of

1 record and lienholder of record.

2 (b) Service.--The advanced notice shall be served in the
3 same manner as required for the notice under section 305(b)
4 (relating to notice to condemnee).

5 (c) Contents.--The advanced notice shall include:

6 (1) The name of the proposed condemnee to whom the
7 proposed condemnation is directed.

8 (2) A statement that the acquiring agency intends to
9 file a declaration of taking for the acquisition of the
10 proposed condemnee's property, which shall proceed after a
11 court grants determination of last resort, no less than 30
12 days from the date of the advanced notice.

13 (3) The name, address and contact information, including
14 a telephone number and email address, at which a
15 representative of the acquiring agency can be reached.

16 (4) A statement that the proposed condemnee's property
17 or portion of the property may be condemned for the purposes
18 of the acquiring agency's program or project.

19 (5) A brief description of the purpose of the proposed
20 condemnation, including the acquiring agency's proposed
21 project.

22 (6) A brief description of the condemnation process in
23 this Commonwealth, including all of the following:

24 (i) What eminent domain is.

25 (ii) The rights of a condemnee under law, including
26 the right to hire a lawyer to help guide the condemnee
27 through the condemnation process.

28 (iii) How just compensation is determined and made
29 or secured under the laws of this Commonwealth.

30 (iv) How a determination of last resort is made.

1 (v) The steps the acquiring agency will take next if
2 the proposed condemnee's property is subject to a
3 declaration of taking.

4 (vi) The process by which the proposed condemnee may
5 challenge the power or the right of the acquiring agency
6 to appropriate the condemned property, the sufficiency of
7 the security, the determination of last resort, the
8 procedure followed by the acquiring agency or the
9 declaration of taking.

10 (d) Proof of service and compliance.--Filing of a copy of
11 the advanced notice and proof of service of the advanced notice,
12 together with the filing of the declaration of taking and
13 security as required under sections 302 (relating to declaration
14 of taking) and 303 (relating to security required), shall
15 constitute compliance with the notice requirements of this
16 section.

17 (e) Publication.--Within 24 hours of issuing advanced notice
18 to a proposed condemnee under subsection (a), an acquiring
19 agency shall post the advanced notice on the acquiring agency's
20 publicly accessible Internet website, if available, and at the
21 acquiring agency's principal office location.

22 Section 4. Section 305(a) and (c)(13) of Title 26 are
23 amended and subsection (c) is amended by adding a paragraph to
24 read:

25 § 305. Notice to condemnee.

26 (a) Written notice.--Within 30 days after the [filing of the
27 declaration of taking] court determines that the exercise of the
28 power of eminent domain to take private property is the last
29 resort, the condemnor shall give written notice of the filing to
30 the condemnee, to any mortgagee of record and to any lienholder

1 of record.

2 * * *

3 (c) Contents.--The notice to be given the condemnee shall
4 state:

5 * * *

6 (12.1) A statement of how the determination of last
7 resort was made.

8 (13) A statement that, if the condemnee wishes to
9 challenge the power or the right of the condemnor to
10 appropriate the condemned property, the sufficiency of the
11 security, the determination of last resort, the procedure
12 followed by the condemnor or the declaration of taking, the
13 condemnee must file preliminary objections within 30 days
14 after being served with notice of condemnation.

15 * * *

16 Section 5. Section 306(a)(3) of Title 26 is amended by
17 adding a subparagraph to read:

18 § 306. Preliminary objections.

19 (a) Filing and exclusive method of challenging certain
20 matters.--

21 * * *

22 (3) Preliminary objections shall be limited to and shall
23 be the exclusive method of challenging:

24 * * *

25 (iii.1) The determination of last resort.

26 * * *

27 Section 6. Sections 307(b)(1), 308(a), 502(a)(2) and (c)
28 heading and (1), 512(4), 519(b) and 521(a)(1) of Title 26 are
29 amended to read:

30 § 307. Possession, right of entry and payment of compensation.

1 * * *

2 (b) Tender of possession or right of entry by condemnee.--

3 (1) If within 60 days from the [filing of the
4 declaration of taking] court granting determination of last
5 resort the condemnor has not paid just compensation as
6 provided in subsection (a), the condemnee may tender
7 possession or right of entry in writing, and the condemnor
8 shall then make payment of the just compensation due the
9 condemnee as estimated by the condemnor.

10 * * *

11 § 308. Revocation of condemnation proceedings.

12 (a) Declaration of relinquishment.--

13 (1) The condemnor, by filing a declaration of
14 relinquishment in court within two years from the [filing of
15 the declaration of taking] court granting determination of
16 last resort and before having made the payment provided in
17 section 307(a) or (b) (relating to possession, right of entry
18 and payment of compensation) or as to which the condemnee has
19 not tendered possession of the condemned property as provided
20 in section 307, may relinquish all or any part of the
21 property condemned that it has not taken actual possession of
22 for use in the improvement.

23 (2) The title shall then revert in the condemnee as of
24 the date of the [filing of the declaration of taking]
25 determination by the judge that the use of eminent domain is
26 the last resort, and all mortgages and other liens existing
27 as of that date and not thereafter discharged shall be
28 reinstated.

29 * * *

30 § 502. Petition for appointment of viewers.

1 (a) Contents of petition.--A condemnor, condemnee or
2 displaced person may file a petition requesting the appointment
3 of viewers, setting forth:

4 * * *

5 (2) The date of the [filing of the declaration of
6 taking] court granting determination of last resort and
7 whether any preliminary objections have been filed and remain
8 undisposed of.

9 * * *

10 (c) Condemnation where no declaration of taking has been
11 filed or no determination of last resort has been made.--

12 (1) An owner of a property interest who asserts that the
13 owner's property interest has been condemned without the
14 filing of a declaration of taking or determination of last
15 resort may file a petition for the appointment of viewers
16 substantially in the form provided for in subsection (a)
17 setting forth the factual basis of the petition.

18 * * *

19 § 512. Report of viewers.

20 The viewers shall file a report which shall include in brief
21 and concise paragraph form:

22 * * *

23 (4) The date of the [filing of the declaration of
24 taking] determination of last resort.

25 * * *

26 § 519. Allocation of damages.

27 * * *

28 (b) Other damages.--The jury or the court in a trial without
29 a jury shall make specific findings as to the portion of the
30 verdict allocated to:

- 1 (1) general damages;
2 (2) moving and removal expenses;
3 (3) business dislocation damages; and
4 (4) other items of special damages authorized by this
5 title;

6 except reasonable appraisal, attorney and engineering fees
7 recoverable under sections 306 (relating to preliminary
8 objections), 308 (relating to revocation of condemnation
9 proceedings), 709 (relating to condemnee's costs where no
10 declaration of taking filed or determination of last resort
11 made) and 710 (relating to limited reimbursement of appraisal,
12 attorney and engineering fees), which shall be determined by the
13 court in an appropriate case.

14 § 521. Liens and distribution of damages.

15 (a) Liens.--

16 (1) Damages payable to a condemnee under sections 701
17 (relating to just compensation; other damages) through 707
18 (relating to removal of machinery, equipment or fixtures),
19 713 (relating to delay compensation), 714 (relating to
20 consequential damages), 715 (relating to damages for vacation
21 of roads) and 902(b)(1) and (2) (relating to moving and
22 related expenses of displaced persons) shall be subject to a
23 lien for all taxes and municipal claims assessed against the
24 property and to all mortgages, judgments and other liens of
25 record against the property for which the particular damages
26 are payable, existing at the date of the [filing of the
27 declaration of taking.] written advanced notice as provided
28 under section 304.1 (relating to advanced notice to
29 condemnee).

30 * * *

1 Section 7. Section 702(a) of Title 26 is amended and the
2 section is amended by adding a subsection to read:

3 § 702. Measure of damages.

4 (a) Just compensation.--Just compensation shall [consist of]
5 be the higher of the following:

6 (1) the difference between the fair market value of the
7 condemnee's entire property interest immediately before the
8 condemnation and as unaffected by the condemnation and the
9 fair market value of the property interest remaining
10 immediately after the condemnation and as affected by the
11 condemnation[.]; and

12 (2) the replacement value of the condemnee's property
13 interest.

14 * * *

15 (d) Augmentation of just compensation.--If a condemnee
16 provides the acquiring agency or court evidence showing proof of
17 continuous ownership as provided under section 1107 (relating to
18 proof of continuous ownership), the amount awarded under
19 subsection (a) shall be augmented by an additional 1% for each
20 year of continuous ownership. The amount of augmentation shall
21 be no greater than 25% of the amount awarded under subsection
22 (a).

23 Section 8. Sections 709 heading and 710(a) of Title 26 are
24 amended to read:

25 § 709. Condemnee's costs where no declaration of taking filed
26 or determination of last resort made.

27 * * *

28 § 710. Limited reimbursement of appraisal, attorney and
29 engineering fees.

30 (a) General rule.--The owner of any right, title or interest

1 in real property acquired or injured by an acquiring agency, who
2 is not eligible for reimbursement of fees under section 306(g)
3 (relating to preliminary objections), 308(d) (relating to
4 revocation of condemnation proceedings) or 709 (relating to
5 condemnee's costs where no declaration of taking filed or
6 determination of last resort made), shall be reimbursed in an
7 amount not to exceed \$4,000 per property, regardless of right,
8 title or interest, as a payment toward reasonable expenses
9 actually incurred for appraisal, attorney and engineering fees,
10 except where the taking is for an easement related to
11 underground piping for water or sewer infrastructure, in which
12 case the reimbursement is limited to \$1,000, regardless of
13 right, title or interest.

14 * * *

15 Section 9. Title 26 is amended by adding sections to read:

16 § 711.1. Coverage of mortgages and liens.

17 If there is an installment purchase contract, mortgage or
18 other evidence of debt on the acquired property at the time of
19 the written advanced notice as provided in section 304.1
20 (relating to advanced notice to condemnee), the condemnee shall
21 be entitled to additional compensation to cover in full the
22 remaining balance at the time of the written advanced notice of
23 the installment purchase contract, mortgage or other evidence of
24 debt on the acquired property.

25 § 717. Compensation for loss of goodwill of business or farm
26 operation.

27 (a) General rule.--The owner of a business or farm operation
28 conducted on the property taken under this title, or, if the
29 property is part of a larger parcel, on the remainder, shall be
30 compensated for loss of goodwill if the owner proves all of the

1 following:

2 (1) The loss is caused by the taking of the property or
3 the injury to the remainder.

4 (2) Compensation for the loss will not be duplicated in
5 the compensation otherwise awarded to the owner.

6 (b) Rebuttal of compensation.--The acquiring agency may
7 rebut the compensation provided under subsection (a) if the
8 acquiring agency proves that the loss could have reasonably been
9 prevented by a relocation of the business or farm operation or
10 by taking steps and adopting procedures that a reasonably
11 prudent person would take or adopt in preserving the goodwill.

12 (c) Leaseback agreement.--If the acquiring agency and the
13 owner of a business or farm operation enter into a leaseback
14 agreement, the following shall apply:

15 (1) No additional goodwill shall accrue during the
16 lease.

17 (2) The entering of a leaseback agreement shall not be a
18 factor in determining goodwill, and any liability for
19 goodwill shall be established and paid at the time of
20 acquisition of the property by eminent domain or subsequent
21 to notice that the property may be taken by eminent domain.

22 (d) Use of State tax returns.--

23 (1) If the owner of a business or farm operation and the
24 acquiring agency do not agree on the value of goodwill, the
25 owner shall make available to the board of viewers or court,
26 and the board of viewers or court shall, upon terms and
27 conditions that will preserve confidentiality, make available
28 to the acquiring agency, the State tax returns of the
29 business or farm operation. The acquiring agency shall review
30 the State tax returns solely for the purpose of determining

1 the amount of compensation under this section.

2 (2) Nothing in this section shall be construed to affect
3 any right a party may otherwise have to discovery or to
4 require the production of documents, papers, books and
5 accounts.

6 (e) Definitions.--As used in this section, the following
7 words and phrases shall have the meanings given to them in this
8 subsection unless the context clearly indicates otherwise:

9 "Goodwill." The benefits that accrue to a business or farm
10 operation as a result of its location, cultural heritage value
11 to the community, reputation for dependability, skill or quality
12 and any other circumstance resulting in probable retention of
13 old or acquisition of new patronage.

14 § 1107. Proof of continuous ownership.

15 (a) Eligibility.--A condemnee shall be eligible for
16 augmentation of just compensation as provided under section
17 702(d) (relating to measure of damages) if the condemnee
18 provides evidence to the acquiring agency or court showing proof
19 of continuous ownership.

20 (b) Establishing continuous ownership.--Proof of continuous
21 ownership of a property may be established through evidence of
22 ownership of the property by the condemnee and the family of the
23 condemnee, which shall include siblings, parents, grandparents,
24 aunts or uncles of the condemnee or the spouse of the condemnee.

25 (c) Burden of proof.--The condemnee shall have the burden of
26 providing continuous ownership to the acquiring agency or court.

27 Section 10. This act shall apply retroactively to a
28 declaration of taking filed on or after January 1, 2024.

29 Section 11. This act shall take effect immediately.