

No. 2006-35

AN ACT

SB 881

Amending Title 26 (Eminent Domain) of the Pennsylvania Consolidated Statutes, providing for limitations on the use of eminent domain; and making a related repeal.

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

Section 1. Title 26 of the Pennsylvania Consolidated Statutes is amended by adding a chapter to read:

CHAPTER 2
LIMITATIONS ON USE OF EMINENT DOMAIN

Sec.

- 201. Short title of chapter.
- 202. Definitions.
- 203. Applicability.
- 204. Eminent domain for private business prohibited.
- 205. Blight.
- 206. Extraterritorial takings.
- 207. Eminent domain of agricultural property (Reserved).

§ 201. Short title of chapter.

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

§ 202. Definitions.

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

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

“Agricultural operation.” A person engaged commercially in the production of an agricultural commodity that has an anticipated yearly gross income of at least \$10,000.

“Agricultural property.” Property that is owned or operated by an agricultural operation in the course of the operation’s production, harvesting or preparation for market of an agricultural commodity. The term also includes any residential dwelling or woodlot situated on the property.

“Common carrier.” Any and all persons or corporations holding out, offering or undertaking, directly or indirectly, service for compensation to the public for the transportation of passengers or property, or both, or any class of passengers or property, by, through, over, above or under land, water

or air, and shall include forwarders, but shall not include contract carriers by motor vehicles, or brokers, or any bona fide cooperative association transporting property exclusively for the members of such association on a nonprofit basis.

“Commonwealth agency.” As defined in 2 Pa.C.S. § 101 (relating to definitions).

“Condemnee.” A person that owns property subject to the exercise of the power of eminent domain by a condemnor.

“Condemnor.” Any of the following which is authorized by law to exercise the power of eminent domain:

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

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

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

(4) A private entity.

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

“Eminent domain.” The power of the Commonwealth to take private property for public use in return for just compensation.

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

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

“Unit of property.” A parcel of real estate or condominium unit, including any interest in common elements with improvements thereon, if any, that is identified by a legal description in a recorded deed or a tax identification number.

§ 203. Applicability.

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

(b) Exception.—This chapter does not affect any of the following:

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

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

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

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

(5) The exercise of eminent domain by a home rule county of the second class A, or a municipality located therein, in areas that 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.

(6) The exercise of eminent domain within a home rule municipality by a county of the second class A in areas that 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 public utility or railroad as defined in 66 Pa.C.S. § 102 (relating to definitions).

(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 incidental area.

(3) There is, on or associated with the property taken, a threat to public health or safety. This paragraph includes the following:

(i) Removal of a public nuisance.

(ii) Removal of a structure which is:

(A) beyond repair; or

(B) unfit for human habitation or use.

This paragraph does not include activities and structures for which nuisance actions are prohibited under section 4 of the act of June 10, 1982 (P.L.454, No.133), referred to as the Right-to-Farm Law.

(4) The property taken is abandoned.

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

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

(7) The property taken is acquired for the development of low-income and mixed-income housing projects pursuant to the act of May 28, 1937 (P.L.955, No.265), known as the Housing Authorities Law, or to be developed using financial incentives available for the development of low-income and mixed-income housing projects under:

(i) section 42 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 42);

(ii) the Housing and Community Development Act of 1974 (Public Law 93-383, 88 Stat. 633);

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

(iv) 53 Pa.C.S. Ch. 60 (relating to optional affordable housing funding);

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

(vi) the Homeownership Choice Program and the PennHOMES Program of the Pennsylvania Housing Finance Agency; and

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

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

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

§ 205. Blight.

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

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

(1) A premises which, because of physical condition or use, is regarded as a public nuisance at common law or has been declared a public nuisance in accordance with the municipality housing, building, plumbing, fire or related codes.

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

- (i) well;
- (ii) shaft;
- (iii) basement;
- (iv) excavation; or
- (v) unsafe fence or structure.

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

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

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

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

(7) An unoccupied property which has been tax delinquent for a period of two years.

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

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

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

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

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

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

(11) A property which has environmentally hazardous conditions, solid waste pollution or contamination in a building or on the land which

poses a direct and immediate threat to the health, safety and welfare of the community.

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

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

(ii) has unsafe external and internal accessways;

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

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

(v) is vacant;

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

(c) Multiple properties.—

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

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

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

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

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

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

(d) Redesignation.—If a condemnor seeks to add or enlarge a blighted area, it must find that the area meets the requirements of subsection (b) or (c) at the time of the addition or enlargement.

(e) Expiration.—The declaration of a blighted area shall expire after 20 years.

§ 206. Extraterritorial takings.

(a) General rule.—Except as set forth in subsection (b), no political subdivision shall exercise eminent domain authority against land that is

situated in another political subdivision without the approval by resolution of the governing body of the political subdivision in which the land is situated.

(b) Exceptions.—This section shall not apply to any of the following:

(1) A school district which exercises eminent domain authority against property located within its geographic boundaries.

(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 (Reserved).

Section 2. Repeals are as follows:

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

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

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

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

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

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

APPROVED—The 4th day of May, A.D. 2006.

EDWARD G. RENDELL