

SENATE, No. 2775

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED NOVEMBER 10, 2005

Sponsored by:

Senator LEONARD T. CONNORS, JR.

District 9 (Atlantic, Burlington and Ocean)

SYNOPSIS

Prevents use of condemnation to acquire residential and other private property under redevelopment laws.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning the condemnation of certain property and amending and
2 supplementing P.L.1992, c.79.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State of*
5 *New Jersey:*

6

7 1. Section 3 of P.L.1992, c.79 (C.40A:12A-3) is amended to read as
8 follows:

9 3. As used in this act:

10 "Bonds" means any bonds, notes, interim certificates, debentures or other
11 obligations issued by a municipality, county, redevelopment entity, or housing
12 authority pursuant to this act.

13 "Condemnation" means the taking of private property under the power of
14 eminent domain pursuant to the "Eminent Domain Act of 1971," P.L.1971,
15 c.361 (C.20:3-1 et seq.).

16 "Development" means the division of a parcel of land into two or more
17 parcels, the construction, reconstruction, conversion, structural alteration,
18 relocation, or enlargement of any building or other structure, or of any mining,
19 excavation or landfill, and any use or change in the use of any building or other
20 structure, or land or extension of use of land, for which permission may be
21 required pursuant to the "Municipal Land Use Law," P.L.1975, c.291
22 (C.40:55D-1 et seq.).

23 "Governing body" means the body exercising general legislative powers in
24 a county or municipality according to the terms and procedural requirements
25 set forth in the form of government adopted by the county or municipality.

26 "Housing authority" means a housing authority created or continued
27 pursuant to this act.

28 "Housing project" means a project, or distinct portion of a project, which
29 is designed and intended to provide decent, safe and sanitary dwellings,
30 apartments or other living accommodations for persons of low and moderate
31 income; such work or undertaking may include buildings, land, equipment,
32 facilities and other real or personal property for necessary, convenient or
33 desirable appurtenances, streets, sewers, water service, parks, site
34 preparation, gardening, administrative, community, health, recreational,
35 educational, welfare or other purposes. The term "housing project" also may
36 be applied to the planning of the buildings and improvements, the acquisition
37 of property, the demolition of existing structures, the construction,
38 reconstruction, alteration and repair of the improvements and all other work
39 in connection therewith.

40 "Persons of low and moderate income" means persons or families who are,

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is
not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 in the case of State assisted projects or programs, so defined by the Council
2 on Affordable Housing in the Department of Community Affairs, or in the case
3 of federally assisted projects or programs, defined as of "low and very low
4 income" by the United States Department of Housing and Urban
5 Development.

6 "Public body" means the State or any county, municipality, school district,
7 authority or other political subdivision of the State.

8 "Public housing" means any housing for persons of low and moderate
9 income owned by a municipality, county, the State or the federal government,
10 or any agency or instrumentality thereof.

11 "Publicly assisted housing" means privately owned housing which receives
12 public assistance or subsidy, which may be grants or loans for construction,
13 reconstruction, conservation, or rehabilitation of the housing, or receives
14 operational or maintenance subsidies either directly or through rental subsidies
15 to tenants, from a federal, State or local government agency or instrumentality.

16
17 "Real property" means all lands, including improvements and fixtures
18 thereon, and property of any nature appurtenant thereto or used in connection
19 therewith, and every estate, interest and right, legal or equitable, therein,
20 including terms for years and liens by way of judgment, mortgage or otherwise,
21 and indebtedness secured by such liens.

22 "Redeveloper" means any person, firm, corporation or public body that
23 shall enter into or propose to enter into a contract with a municipality or other
24 redevelopment entity for the redevelopment or rehabilitation of an area in need
25 of redevelopment, or an area in need of rehabilitation, or any part thereof,
26 under the provisions of this act, or for any construction or other work forming
27 part of a redevelopment or rehabilitation project.

28 "Redevelopment" means clearance, replanning, development and
29 redevelopment; the conservation and rehabilitation of any structure or
30 improvement, the construction and provision for construction of residential,
31 commercial, industrial, public or other structures and the grant or dedication
32 of spaces as may be appropriate or necessary in the interest of the general
33 welfare for streets, parks, playgrounds, or other public purposes, including
34 recreational and other facilities incidental or appurtenant thereto, in
35 accordance with a redevelopment plan.

36 "Redevelopment agency" means a redevelopment agency created pursuant
37 to subsection a. of section 11 of P.L.1992, c.79 (C.40A:12A-11) or
38 established heretofore pursuant to the "Redevelopment Agencies Law,"
39 P.L.1949, c.306 (C.40:55C-1 et seq.), repealed by this act, which has been
40 permitted in accordance with the provisions of this act to continue to exercise
41 its redevelopment functions and powers.

42 "Redevelopment area" or "area in need of redevelopment" means an area
43 determined to be in need of redevelopment pursuant to sections 5 and 6 of

1 P.L.1992, c.79 (C.40A:12A-5 and 40A:12A-6) or determined heretofore to
2 be a "blighted area" pursuant to P.L.1949, c.187 (C.40:55-21.1 et seq.)
3 repealed by this act, both determinations as made pursuant to the authority of
4 Article VIII, Section III, paragraph 1 of the Constitution. A redevelopment
5 area may include lands, buildings, or improvements which of themselves are
6 not detrimental to the public health, safety or welfare, but the inclusion of
7 which is found necessary, with or without change in their condition, for the
8 effective redevelopment of the area of which they are a part; except that the
9 boundaries of a redevelopment area shall not be extended to include property
10 that is legally occupied as residential property and maintained in accordance
11 with applicable housing code and construction code standards.

12 "Redevelopment entity" means a municipality or an entity authorized by the
13 governing body of a municipality pursuant to subsection c. of section 4 of
14 P.L.1992, c.79 (C.40A:12A-4) to implement redevelopment plans and carry
15 out redevelopment projects in an area in need of redevelopment, or in an area
16 in need of rehabilitation, or in both.

17 "Redevelopment plan" means a plan adopted by the governing body of a
18 municipality for the redevelopment or rehabilitation of all or any part of a
19 redevelopment area, or an area in need of rehabilitation, which plan shall be
20 sufficiently complete to indicate its relationship to definite municipal objectives
21 as to appropriate land uses, public transportation and utilities, recreational and
22 municipal facilities, and other public improvements; and to indicate proposed
23 land uses and building requirements in the redevelopment area or area in need
24 of rehabilitation, or both.

25 "Redevelopment project" means any work or undertaking pursuant to a
26 redevelopment plan; such undertaking may include any buildings, land,
27 including demolition, clearance or removal of buildings from land, equipment,
28 facilities, or other real or personal properties which are necessary, convenient,
29 or desirable appurtenances, such as but not limited to streets, sewers, utilities,
30 parks, site preparation, landscaping, and administrative, community, health,
31 recreational, educational, and welfare facilities.

32 "Rehabilitation" means an undertaking, by means of extensive repair,
33 reconstruction or renovation of existing structures, with or without the
34 introduction of new construction or the enlargement of existing structures, in
35 any area that has been determined to be in need of rehabilitation or
36 redevelopment, to eliminate substandard structural or housing conditions and
37 arrest the deterioration of that area.

38 "Rehabilitation area" or "area in need of rehabilitation" means any area
39 determined to be in need of rehabilitation pursuant to section 14 of P.L.1992,
40 c.79 (C.40A:12A-14).
41 (cf: P.L.1992, c.79, s.3)

42

43 2. Section 5 of P.L.1992, c.79 (C.40A:12A-5) is amended to read as

1 follows:

2 5. A delineated area may be determined to be in need of redevelopment
3 if, after investigation, notice and hearing as provided in section 6 of P.L.1992,
4 c.79 (C.40A:12A-6), the governing body of the municipality by resolution
5 concludes that within the delineated area any of the following conditions is
6 found:

7 a. The generality of buildings are substandard, unsafe, unsanitary,
8 dilapidated, or obsolescent, or possess any of such characteristics, or are so
9 lacking in light, air, or space, as to be conducive to unwholesome living or
10 working conditions.

11 b. The discontinuance of the use of buildings previously used for
12 commercial, manufacturing, or industrial purposes; the abandonment of such
13 buildings; or the same being allowed to fall into so great a state of disrepair as
14 to be untenable.

15 c. Land that is owned by the municipality, the county, a local housing
16 authority, redevelopment agency or redevelopment entity, or unimproved
17 vacant land that has remained so for a period of ten years prior to adoption of
18 the resolution, and that by reason of its location, remoteness, lack of means of
19 access to developed sections or portions of the municipality, or topography,
20 or nature of the soil, is not likely to be developed through the instrumentality
21 of private capital.

22 d. Areas with buildings or improvements which, by reason of
23 dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack
24 of ventilation, light and sanitary facilities, excessive land coverage, deleterious
25 land use or obsolete layout, or any combination of these or other factors, are
26 detrimental to the safety, health, morals, or welfare of the community.

27 e. A growing lack or total lack of proper utilization of areas, in some
28 instances, caused by the condition of the title[,] or diverse ownership of the
29 real property therein or other conditions, resulting in a stagnant or not fully
30 that prevents the productive condition utilization of land which could be
31 potentially useful and valuable for contributing to and serving the public health,
32 safety and welfare.

33 f. Areas, in excess of five contiguous acres, whereon buildings or
34 improvements have been destroyed, consumed by fire, demolished or altered
35 by the action of storm, fire, cyclone, tornado, earthquake or other casualty in
36 such a way that the aggregate assessed value of the area has been materially
37 depreciated.

38 g. In any municipality in which an enterprise zone has been designated
39 pursuant to the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303
40 (C.52:27H-60 et seq.) the execution of the actions prescribed in that act for
41 the adoption by the municipality and approval by the New Jersey Urban
42 Enterprise Zone Authority of the zone development plan for the area of the
43 enterprise zone shall be considered sufficient for the determination that the

1 area is in need of redevelopment pursuant to sections 5 and 6 of P.L.1992,
2 c.79 (C.40A:12A-5 and 40A:12A-6) for the purpose of granting tax
3 exemptions within the enterprise zone district pursuant to the provisions of
4 P.L.1991, c.431 (C.40A:20-1 et seq.) or the adoption of a tax abatement and
5 exemption ordinance pursuant to the provisions of P.L.1991, c.441
6 (C.40A:21-1 et seq.). The municipality shall not utilize any other
7 redevelopment powers within the urban enterprise zone unless the municipal
8 governing body and planning board have also taken the actions and fulfilled the
9 requirements prescribed in P.L.1992, c.79 (C.40A:12A-1 et al.) for
10 determining that the area is in need of redevelopment or an area in need of
11 rehabilitation and the municipal governing body has adopted a redevelopment
12 plan ordinance including the area of the enterprise zone.

13 h. The designation of the delineated area is consistent with smart growth
14 planning principles adopted pursuant to law or regulation.
15 (cf: P.L.2003, c.125, s.3)

16

17 3. Section 6 of P.L.1992, c.79 (C.40A:12A-6) is amended to read as
18 follows:

19 6. a. No area of a municipality shall be determined a redevelopment area
20 unless the governing body of the municipality shall, by ~~[resolution]~~ ordinance,
21 authorize the planning board to undertake a preliminary investigation to
22 determine whether the proposed area is a redevelopment area according to
23 the criteria set forth in section 5 of P.L.1992, c.79 (C.40A:12A-5). Such
24 determination shall be made after public notice and public hearing as provided
25 in subsection b. of this section. The governing body of a municipality shall
26 assign the conduct of the investigation and hearing to the planning board of the
27 municipality.

28 b. (1) Before proceeding to a public hearing on the matter, the planning
29 board shall prepare a map showing the boundaries of the proposed
30 redevelopment area and the location of the various parcels of property
31 included therein. There shall be appended to the map a statement setting forth
32 the basis for the investigation.

33 (2) The planning board shall specify a date for and give notice of a hearing
34 for the purpose of hearing persons who are interested in or would be affected
35 by a determination that the delineated area is a redevelopment area.

36 (3) The hearing notice shall set forth the general boundaries of the area to
37 be investigated and state that a map has been prepared and can be inspected
38 at the office of the municipal clerk. A copy of the notice shall be published in
39 a newspaper of general circulation in the municipality once each week for two
40 consecutive weeks, and the last publication shall be not less than ten days prior
41 to the date set for the hearing. A copy of the notice shall be ~~[mailed]~~ sent by
42 certified mail, at least ~~[ten]~~ 14 days prior to the date set for the hearing to the
43 last owner, ~~[if any,]~~ of each parcel of property within the area according to

1 the assessment records of the municipality. A notice shall also be sent by
2 certified mail to all persons at their last known address, [if any,] whose names
3 are noted on the assessment records as claimants of an interest in any such
4 parcel. The assessor of the municipality shall make a notation upon the
5 records when requested to do so by any person claiming to have an interest
6 in any parcel of property in the municipality. The notice shall be published and
7 mailed by the municipal clerk by certified mail, or by such clerk or official as
8 the planning board shall otherwise designate. [Failure to mail any such notice
9 shall not invalidate the investigation or determination thereon.]

10 (4) At the hearing, which may be adjourned from time to time, the
11 planning board shall hear all persons who are interested in or would be
12 affected by a determination that the delineated area is a redevelopment area.
13 All objections to such a determination and evidence in support of those
14 objections, given orally or in writing, shall be received and considered and
15 made part of the public record.

16 (5) After completing its hearing on this matter, the planning board shall
17 recommend that the delineated area, or any part thereof, be determined, or not
18 be determined, by the municipal governing body to be a redevelopment area.
19 After receiving the recommendation of the planning board, the municipal
20 governing body may adopt [a resolution] an ordinance determining that the
21 delineated area, or any part thereof, is a redevelopment area. Upon the
22 adoption of [a resolution] an ordinance, the clerk of the municipality shall,
23 forthwith, transmit a copy of the [resolution] ordinance to the Commissioner
24 of Community Affairs for review. If the area in need of redevelopment is not
25 situated in an area in which development or redevelopment is to be
26 encouraged pursuant to any State law or regulation promulgated pursuant
27 thereto, the determination shall not take effect without first receiving the review
28 and the approval of the commissioner. If the commissioner does not issue an
29 approval or disapproval within 30 calendar days of transmittal by the clerk, the
30 determination shall be deemed to be approved. If the area in need of
31 redevelopment is situated in an area in which development or redevelopment
32 is to be encouraged pursuant to any State law or regulation promulgated
33 pursuant thereto, then the determination shall take effect after the clerk has
34 transmitted a copy of the [resolution] ordinance to the commissioner. The
35 determination, if supported by substantial evidence and, if required, approved
36 by the commissioner, shall be binding and conclusive upon all persons affected
37 by the determination. Notice of the determination shall be served, within 10
38 days after the determination, upon each person who filed a written objection
39 thereto and stated, in or upon the written submission, an address to which
40 notice of determination may be sent.

41 (6) [If written objections were filed in connection with the hearing, the
42 municipality shall, for 45 days next following its determination to which the
43 objections were filed, take no further action to acquire any property by

1 condemnation within the redevelopment area.] (Deleted by amendment, P.L.
2 , c. .) (pending before the Legislature as this bill)

3 (7) If a person who filed a written objection to a determination by the
4 municipality pursuant to this subsection shall, within 45 days after the adoption
5 by the municipality of the determination to which the person objected, apply
6 to the Superior Court, the court may grant further review of the determination
7 by procedure in lieu of prerogative writ; and in any such action the court may
8 make any incidental order that it deems proper.

9 c. An area determined to be in need of redevelopment pursuant to this
10 section shall be deemed to be a "blighted area" for the purposes of Article
11 VIII, Section III, paragraph 1 of the Constitution. If an area is determined to
12 be a redevelopment area and a redevelopment plan is adopted for that area
13 in accordance with the provisions of this act, the municipality is authorized to
14 utilize all those powers provided in section 8 of P.L.1992, c.79
15 (C.40A:12A-8).

16 (cf: P.L.2003, c.125, s.4)

17
18 4. Section 8 of P.L.1992, c.79 (C.40A:12A-8) is amended to read as
19 follows:

20 8. Upon the adoption of a redevelopment plan pursuant to section 7 of
21 P.L.1992, c.79 (C.40A:12A-7) and the fulfillment of those conditions set forth
22 in section 6 of P.L. , c. (C.) (pending before the Legislature as this
23 bill), the municipality or redevelopment entity designated by the governing
24 body may proceed with the clearance, replanning, development and
25 redevelopment of the area designated in that plan. In order to carry out and
26 effectuate the purposes of this act and the terms of the redevelopment plan, the
27 municipality or designated redevelopment entity may:

28 a. Undertake redevelopment projects, and for this purpose issue bonds
29 in accordance with the provisions of section 29 of P.L.1992, c.79
30 (C.40A:12A-29).

31 b. Acquire property pursuant to subsection i. of section 22 of P.L.1992,
32 c.79 (C.40A:12A-22).

33 c. Acquire, by condemnation, any land or building which is necessary for
34 the redevelopment project, pursuant to the provisions of the "Eminent Domain
35 Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.) except as provided below:

36 (1) land and buildings legally occupied as residential property and
37 maintained in accordance with applicable housing code and construction code
38 standards shall not be acquired under this subsection;

39 (2) private property within a redevelopment area that is not itself in need
40 of redevelopment shall not be taken for the use of, or transfer to, a private
41 entity for economic development purposes pursuant to this subsection.

42 d. Clear any area owned or acquired and install, construct or reconstruct
43 streets, facilities, utilities, and site improvements essential to the preparation of

1 sites for use in accordance with the redevelopment plan.

2 e. Prepare or arrange by contract for the provision of professional services
3 and the preparation of plans by registered architects, licensed professional
4 engineers or planners, or other consultants for the carrying out of
5 redevelopment projects.

6 f. Arrange or contract with public agencies or redevelopers for the
7 planning, replanning, construction, or undertaking of any project or
8 redevelopment work, or any part thereof; negotiate and collect revenue from
9 a redeveloper to defray the costs of the redevelopment entity, including where
10 applicable the costs incurred in conjunction with bonds, notes or other
11 obligations issued by the redevelopment entity, and to secure payment of such
12 revenue; as part of any such arrangement or contract, provide for extension
13 of credit, or making of loans, to redevelopers to finance any project or
14 redevelopment work, or upon a finding that the project or redevelopment
15 work would not be undertaken but for the provision of financial assistance, or
16 would not be undertaken in its intended scope without the provision of
17 financial assistance, provide as part of an arrangement or contract for capital
18 grants to redevelopers; and arrange or contract with public agencies or
19 redevelopers for the opening, grading or closing of streets, roads, roadways,
20 alleys, or other places or for the furnishing of facilities or for the acquisition by
21 such agency of property options or property rights or for the furnishing of
22 property or services in connection with a redevelopment area.

23 g. Lease or convey property or improvements to any other party pursuant
24 to this section, without public bidding and at such prices and upon such terms
25 as it deems reasonable, provided that the lease or conveyance is made in
26 conjunction with a redevelopment plan, notwithstanding the provisions of any
27 law, rule, or regulation to the contrary.

28 h. Enter upon any building or property in any redevelopment area in order
29 to conduct investigations or make surveys, sounding or test borings necessary
30 to carry out the purposes of this act.

31 i. Arrange or contract with a public agency for the relocation, pursuant to
32 the "Relocation Assistance Law of 1967," P.L.1967, c.79 (C.52:31B-1 et
33 seq.) and the "Relocation Assistance Act," P.L.1971, c.362 (C.20:4-1 et
34 seq.), of residents, industry or commerce displaced from a redevelopment
35 area.

36 j. Make, consistent with the redevelopment plan: (1) plans for carrying out
37 a program of voluntary repair and rehabilitation of buildings and
38 improvements; and (2) plans for the enforcement of laws, codes, and
39 regulations relating to the use and occupancy of buildings and improvements,
40 and to the compulsory repair, rehabilitation, demolition, or removal of buildings
41 and improvements.

42 k. Request that the planning board recommend and
43 governing body designate particular areas as being in need of redevelopment
or rehabilitation in accordance with the provisions of this act and make

1 recommendations for the redevelopment or rehabilitation of such areas.

2 1. Study the recommendations of the planning board or governing body for
3 redevelopment of the area.

4 m. Publish and disseminate information concerning any redevelopment
5 area, plan or project.

6 n. Do all things necessary or convenient to carry out its powers.

7 (cf: P.L.1992, c.79, s.8)

8

9 5. Section 14 of P.L.1992, c.79 (C.40A:12A-14) is amended to read as
10 follows:

11 14. a. A delineated area may be determined to be in need of rehabilitation
12 if the governing body of the municipality determines by [resolution] ordinance
13 that there exist in that area conditions such that (1) a significant portion of
14 structures therein are in a deteriorated or substandard condition and there is
15 a continuing pattern of vacancy, abandonment or underutilization of properties
16 in the area, with a persistent arrearage of property tax payments thereon or (2)
17 more than half of the housing stock in the delineated area is at least 50 years
18 old, or a majority of the water and sewer infrastructure in the delineated area
19 is at least 50 years old and is in need of repair or substantial maintenance; and
20 (3) a program of rehabilitation, as defined in section 3 of P.L.1992, c.79
21 (C.40A:12A-3), may be expected to prevent further deterioration and
22 promote the overall development of the community. Where warranted by
23 consideration of the overall conditions and requirements of the community, a
24 finding of need for rehabilitation may extend to the entire area of a
25 municipality. Prior to adoption of the [resolution] ordinance, the governing
26 body shall submit it to the municipal planning board for its review. Within 45
27 days of its receipt of the proposed [resolution] ordinance, the municipal
28 planning board shall submit its recommendations regarding the proposed
29 [resolution] ordinance, including any modifications which it may recommend,
30 to the governing body for its consideration. Thereafter, or after the expiration
31 of the 45 days if the municipal planning board does not submit
32 recommendations, the governing body may adopt the [resolution] ordinance,
33 with or without modification. The [resolution] ordinance shall not become
34 effective without the approval of the commissioner pursuant to section 6 of
35 P.L.1992, c.79 (C.40A:12A-6), if otherwise required pursuant to that section.

36 b. A delineated area shall be deemed to have been determined to be an
37 area in need of rehabilitation in accordance with the provisions of this act if it
38 has heretofore been determined to be an area in need of rehabilitation pursuant
39 to P.L.1975, c.104 (C.54:4-3.72 et seq.), P.L.1977, c.12 (C.54:4-3.95 et
40 seq.) or P.L.1979, c.233 (C.54:4-3.121 et seq.).

41 (cf: P.L.2003, c.125, s.5)

42

43 6. (New section) a. Prior to undertaking any action to acquire any

1 property by condemnation within an area in need of redevelopment or an area
2 in need of rehabilitation, the redevelopment entity shall make a declaration of
3 public purpose, which shall be by ordinance if the redevelopment entity is a
4 municipality, or by resolution if the redevelopment entity is an entity authorized
5 by the governing body of the municipality pursuant to subsection c. of section
6 4 of P.L.1992, c.79 (C.40A:12A-4).

7 b. Regardless of whether the redevelopment entity is the municipality or
8 another entity designated by the municipality, the declaration of public purpose
9 shall occur only upon proper notification having been provided not less than
10 14 days prior to the first reading of the ordinance or introduction of the
11 resolution, as the case may be. If the municipality is the redevelopment entity,
12 publication shall occur pursuant to R.S.40:49-2. If the municipality has
13 designated another entity as the redevelopment entity, a copy of the intent to
14 adopt a declaration of public purpose shall be published in a newspaper of
15 general circulation in the municipality.

16 c. In addition to the publication requirements in subsection b. of this
17 section, a copy of the notice shall be sent by certified mail at least 14 days
18 prior to the date set for the hearing to the last owner of each parcel of
19 property subject to the declaration of public purpose according to the
20 assessment records of the municipality. A notice shall also be sent to all
21 persons, at their last known address, whose names are noted on the
22 assessment records as claimants of an interest in any such parcel. The
23 assessor of the municipality shall make a notation upon the records when
24 requested to do so by any person claiming to have an interest in any parcel of
25 property in the municipality.

26 d. A declaration of public purpose shall set forth, in detail, the public
27 purposes for which the condemnation action is being undertaken by the
28 redevelopment entity.

29
30 7. This act shall take effect immediately.

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