



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB4150

by Rep. Lindsay Parkhurst

SYNOPSIS AS INTRODUCED:

735 ILCS 30/5-5-5

Amends the Eminent Domain Act. In language creating a rebuttable presumption that the acquisition of certain property (or right or interest in property) is (i) primarily for the benefit, use, or enjoyment of the public; and (ii) necessary for a public purpose, removes: language referring to the use of the land for railroads; and references to land acquired under certain other Acts. Provides that if the exercise of eminent domain authority is to acquire property for private ownership or control and if the primary purpose of the acquisition is, among other enumerated purposes, ownership or use by a railroad for passenger transportation purposes (instead of "passenger or freight transportation purposes), then the condemning authority must prove by a preponderance of the evidence that the acquisition of the property is necessary for a public purpose and that an instrument has been or will be executed and recorded against the acquired property to assure that the project and the use of the property remain consistent with the use for a period of at least 40 years, which execution and recording shall be included as a requirement in any final order entered in the condemnation proceeding.

LRB100 14915 HEP 30486 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Eminent Domain Act is amended by changing
5 Section 5-5-5 as follows:

6 (735 ILCS 30/5-5-5)

7 Sec. 5-5-5. Exercise of the power of eminent domain; public
8 use; blight.

9 (a) In addition to all other limitations and requirements,
10 a condemning authority may not take or damage property by the
11 exercise of the power of eminent domain unless it is for a
12 public use, as set forth in this Section.

13 (a-5) Subsections (b), (c), (d), (e), and (f) of this
14 Section do not apply to the acquisition of property under the
15 O'Hare Modernization Act. A condemning authority may exercise
16 the power of eminent domain for the acquisition or damaging of
17 property under the O'Hare Modernization Act as provided for by
18 law in effect prior to the effective date of this Act.

19 (a-10) Subsections (b), (c), (d), (e), and (f) of this
20 Section do not apply to the acquisition or damaging of property
21 in furtherance of the goals and objectives of an existing tax
22 increment allocation redevelopment plan. A condemning
23 authority may exercise the power of eminent domain for the

1 acquisition of property in furtherance of an existing tax
2 increment allocation redevelopment plan as provided for by law
3 in effect prior to the effective date of this Act.

4 As used in this subsection, "existing tax increment
5 allocation redevelopment plan" means a redevelopment plan that
6 was adopted under the Tax Increment Allocation Redevelopment
7 Act (Article 11, Division 74.4 of the Illinois Municipal Code)
8 prior to April 15, 2006 and for which property assembly costs
9 were, before that date, included as a budget line item in the
10 plan or described in the narrative portion of the plan as part
11 of the redevelopment project, but does not include (i) any
12 additional area added to the redevelopment project area on or
13 after April 15, 2006, (ii) any subsequent extension of the
14 completion date of a redevelopment plan beyond the estimated
15 completion date established in that plan prior to April 15,
16 2006, (iii) any acquisition of property in a conservation area
17 for which the condemnation complaint is filed more than 12
18 years after the effective date of this Act, or (iv) any
19 acquisition of property in an industrial park conservation
20 area.

21 As used in this subsection, "conservation area" and
22 "industrial park conservation area" have the same meanings as
23 under Section 11-74.4-3 of the Illinois Municipal Code.

24 (b) If the exercise of eminent domain authority is to
25 acquire property for public ownership and control, then the
26 condemning authority must prove that (i) the acquisition of the

1 property is necessary for a public purpose and (ii) the
2 acquired property will be owned and controlled by the
3 condemning authority or another governmental entity.

4 (c) Except when the acquisition is governed by subsection
5 (b) or is primarily for one of the purposes specified in
6 subsection (d), (e), or (f) and the condemning authority elects
7 to proceed under one of those subsections, if the exercise of
8 eminent domain authority is to acquire property for private
9 ownership or control, or both, then the condemning authority
10 must prove by clear and convincing evidence that the
11 acquisition of the property for private ownership or control is
12 (i) primarily for the benefit, use, or enjoyment of the public
13 and (ii) necessary for a public purpose.

14 An acquisition of property primarily for the purpose of the
15 elimination of blight is rebuttably presumed to be for a public
16 purpose and primarily for the benefit, use, or enjoyment of the
17 public under this subsection.

18 Any challenge to the existence of blighting factors alleged
19 in a complaint to condemn under this subsection shall be raised
20 within 6 months of the filing date of the complaint to condemn,
21 and if not raised within that time the right to challenge the
22 existence of those blighting factors shall be deemed waived.

23 Evidence that the Illinois Commerce Commission has granted
24 a certificate or otherwise made a finding of public convenience
25 and necessity for an acquisition of property (or any right or
26 interest in property) for private ownership or control

1 (including, without limitation, an acquisition for which the
2 use of eminent domain is authorized under the Public Utilities
3 Act, the Telephone Company Act, or the Electric Supplier Act)
4 to be used for utility purposes creates a rebuttable
5 presumption that such acquisition of that property (or right or
6 interest in property) is (i) primarily for the benefit, use, or
7 enjoyment of the public and (ii) necessary for a public
8 purpose.

9 In the case of an acquisition of property (or any right or
10 interest in property) for private ownership or control to be
11 used for utility or, ~~pipeline, or railroad~~ purposes for which
12 no certificate or finding of public convenience and necessity
13 by the Illinois Commerce Commission is required, evidence that
14 the acquisition is one for which the use of eminent domain is
15 authorized under one of the following laws creates a rebuttable
16 presumption that the acquisition of that property (or right or
17 interest in property) is (i) primarily for the benefit, use, or
18 enjoyment of the public and (ii) necessary for a public
19 purpose:

20 (1) the Public Utilities Act,

21 (2) the Telephone Company Act,

22 (3) the Electric Supplier Act,

23 (4) the Railroad Terminal Authority Act,

24 (5) (blank) ~~the Grand Avenue Railroad Relocation~~
25 ~~Authority Act,~~

26 (6) (blank) ~~the West Cook Railroad Relocation and~~

1 ~~Development Authority Act,~~

2 (7) Section 4-505 of the Illinois Highway Code,

3 (8) (blank) ~~Section 17 or 18 of the Railroad~~
4 ~~Incorporation Act,~~

5 (9) (blank) ~~Section 18c 7501 of the Illinois Vehicle~~
6 ~~Code.~~

7 (d) If the exercise of eminent domain authority is to
8 acquire property for private ownership or control and if the
9 primary basis for the acquisition is the elimination of blight
10 and the condemning authority elects to proceed under this
11 subsection, then the condemning authority must: (i) prove by a
12 preponderance of the evidence that acquisition of the property
13 for private ownership or control is necessary for a public
14 purpose; (ii) prove by a preponderance of the evidence that the
15 property to be acquired is located in an area that is currently
16 designated as a blighted area or conservation area under an
17 applicable statute; (iii) if the existence of blight or
18 blighting factors is challenged in an appropriate motion filed
19 within 6 months after the date of filing of the complaint to
20 condemn, prove by a preponderance of the evidence that the
21 required blighting factors existed in the area so designated
22 (but not necessarily in the particular property to be acquired)
23 at the time of the designation under item (ii) or at any time
24 thereafter; and (iv) prove by a preponderance of the evidence
25 at least one of the following:

26 (A) that it has entered into an express written

1 agreement in which a private person or entity agrees to
2 undertake a development project within the blighted area
3 that specifically details the reasons for which the
4 property or rights in that property are necessary for the
5 development project;

6 (B) that the exercise of eminent domain power and the
7 proposed use of the property by the condemning authority
8 are consistent with a regional plan that has been adopted
9 within the past 5 years in accordance with Section 5-14001
10 of the Counties Code or Section 11-12-6 of the Illinois
11 Municipal Code or with a local land resource management
12 plan adopted under Section 4 of the Local Land Resource
13 Management Planning Act; or

14 (C) that (1) the acquired property will be used in the
15 development of a project that is consistent with the land
16 uses set forth in a comprehensive redevelopment plan
17 prepared in accordance with the applicable statute
18 authorizing the condemning authority to exercise the power
19 of eminent domain and is consistent with the goals and
20 purposes of that comprehensive redevelopment plan, and (2)
21 an enforceable written agreement, deed restriction, or
22 similar encumbrance has been or will be executed and
23 recorded against the acquired property to assure that the
24 project and the use of the property remain consistent with
25 those land uses, goals, and purposes for a period of at
26 least 40 years, which execution and recording shall be

1 included as a requirement in any final order entered in the
2 condemnation proceeding.

3 The existence of an ordinance, resolution, or other
4 official act designating an area as blighted is not prima facie
5 evidence of the existence of blight. A finding by the court in
6 a condemnation proceeding that a property or area has not been
7 proven to be blighted does not apply to any other case or
8 undermine the designation of a blighted area or conservation
9 area or the determination of the existence of blight for any
10 other purpose or under any other statute, including without
11 limitation under the Tax Increment Allocation Redevelopment
12 Act (Article 11, Division 74.4 of the Illinois Municipal Code).

13 Any challenge to the existence of blighting factors alleged
14 in a complaint to condemn under this subsection shall be raised
15 within 6 months of the filing date of the complaint to condemn,
16 and if not raised within that time the right to challenge the
17 existence of those blighting factors shall be deemed waived.

18 (e) If the exercise of eminent domain authority is to
19 acquire property for private ownership or control and if the
20 primary purpose of the acquisition is one of the purposes
21 specified in item (iii) of this subsection and the condemning
22 authority elects to proceed under this subsection, then the
23 condemning authority must prove by a preponderance of the
24 evidence that: (i) the acquisition of the property is necessary
25 for a public purpose; (ii) an enforceable written agreement,
26 deed restriction, or similar encumbrance has been or will be

1 executed and recorded against the acquired property to assure
2 that the project and the use of the property remain consistent
3 with the applicable purpose specified in item (iii) of this
4 subsection for a period of at least 40 years, which execution
5 and recording shall be included as a requirement in any final
6 order entered in the condemnation proceeding; and (iii) the
7 acquired property will be one of the following:

8 (1) included in the project site for a residential
9 project, or a mixed-use project including residential
10 units, where not less than 20% of the residential units in
11 the project are made available, for at least 15 years, by
12 deed restriction, long-term lease, regulatory agreement,
13 extended use agreement, or a comparable recorded
14 encumbrance, to low-income households and very low-income
15 households, as defined in Section 3 of the Illinois
16 Affordable Housing Act;

17 (2) used primarily for public airport, road, parking,
18 or mass transportation purposes and sold or leased to a
19 private party in a sale-leaseback, lease-leaseback, or
20 similar structured financing;

21 (3) owned or used by a public utility or electric
22 cooperative for utility purposes;

23 (4) owned or used by a railroad for passenger ~~or~~
24 ~~freight~~ transportation purposes;

25 (5) sold or leased to a private party that operates a
26 water supply, waste water, recycling, waste disposal,

1 waste-to-energy, or similar facility;

2 (6) sold or leased to a not-for-profit corporation
3 whose purposes include the preservation of open space, the
4 operation of park space, and similar public purposes;

5 (7) used as a library, museum, or related facility, or
6 as infrastructure related to such a facility;

7 (8) used by a private party for the operation of a
8 charter school open to the general public; or

9 (9) a historic resource, as defined in Section 3 of the
10 Illinois State Agency Historic Resources Preservation Act,
11 a landmark designated as such under a local ordinance, or a
12 contributing structure within a local landmark district
13 listed on the National Register of Historic Places, that is
14 being acquired for purposes of preservation or
15 rehabilitation.

16 (f) If the exercise of eminent domain authority is to
17 acquire property for public ownership and private control and
18 if the primary purpose of the acquisition is one of the
19 purposes specified in item (iii) of this subsection and the
20 condemning authority elects to proceed under this subsection,
21 then the condemning authority must prove by a preponderance of
22 the evidence that: (i) the acquisition of the property is
23 necessary for a public purpose; (ii) the acquired property will
24 be owned by the condemning authority or another governmental
25 entity; and (iii) the acquired property will be controlled by a
26 private party that operates a business or facility related to

1 the condemning authority's operation of a university, medical
2 district, hospital, exposition or convention center, mass
3 transportation facility, or airport, including, but not
4 limited to, a medical clinic, research and development center,
5 food or commercial concession facility, social service
6 facility, maintenance or storage facility, cargo facility,
7 rental car facility, bus facility, taxi facility, flight
8 kitchen, fixed based operation, parking facility, refueling
9 facility, water supply facility, and railroad tracks and
10 stations.

11 (g) This Article is a limitation on the exercise of the
12 power of eminent domain, but is not an independent grant of
13 authority to exercise the power of eminent domain.

14 (Source: P.A. 94-1055, eff. 1-1-07.)