



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB2746

Introduced 1/20/2006, by Sen. Edward Petka

SYNOPSIS AS INTRODUCED:

735 ILCS 5/7-102.4 new
735 ILCS 5/7-102.6 new
735 ILCS 5/7-102.7 new
735 ILCS 5/7-102.8 new
735 ILCS 5/7-102.9 new
735 ILCS 5/7-102.10 new
735 ILCS 5/7-102.11 new
735 ILCS 5/7-121
735 ILCS 5/7-900 new
735 ILCS 5/7-110 rep.
30 ILCS 805/8.30 new

from Ch. 110, par. 7-121

Amends the Eminent Domain Article of the Code of Civil Procedure. Requires all units of local government other than a municipality or a county to obtain the approval by ordinance of the municipality or county within which the subject property is located before entering into negotiations or commencing proceedings to acquire property by eminent domain. Requires units of local government and school districts to follow certain procedures to acquire property under the power of eminent domain. Requires the condemning authority to reimburse certain appraisal costs, attorney's fees, and relocation expenses. Requires the Office of the Attorney General to publish a summary of eminent domain rights and remedies for inclusion with certain notices. Authorizes the court to dismiss a complaint for condemnation if it finds that the condemning authority or any other governmental entity has exercised or failed to exercise a regulatory power for the purpose of holding down or diminishing just compensation. Places restrictions on the sale to a private party of property acquired by eminent domain. Prohibits a plaintiff from dismissing or abandoning condemnation proceedings after the complaint has been filed but provides that certain public utilities are not prohibited from dismissing or abandoning the proceedings until after the property is taken. Provides that the condemning authority is liable for costs, expenses, and reasonable attorney's fees incurred by a landowner in obtaining deposit of an amount not deposited in the time provided in the order of taking. Authorizes the use of evidence of comparable sales initiated and bona fide offers to purchase offered prior to filing of the complaint for use in determining the fair cash market value of the property. Makes other changes. Preempts home rule powers. Amends the State Mandates Act to require implementation without reimbursement by the State. Effective immediately.

LRB094 15021 MKM 50141 b

FISCAL NOTE ACT
MAY APPLY

HOME RULE NOTE
ACT MAY APPLY

HOUSING
AFFORDABILITY
IMPACT NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

1 AN ACT concerning eminent domain.

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

4 Section 5. The Code of Civil Procedure is amended by adding
5 Sections 7-102.4, 7-102.6, 7-102.7, 7-102.8, 7-102.9,
6 7-102.10, 7-102.11, and 7-900 and by changing Section 7-121 as
7 follows:

8 (735 ILCS 5/7-102.4 new)

9 Sec. 7-102.4. Limitations on the exercise of the power of
10 eminent domain.

11 (a) In this Section:

12 "Condemning authority" means the State, any unit of local
13 government, or any school district.

14 "Unit of local government" means that term as it is defined
15 in Section 1 of Article 7 of the Illinois Constitution.

16 (b) In addition to any other statutory requirements, any
17 unit of local government, other than a municipality or a
18 county, seeking to acquire property shall not enter into
19 negotiations or commence any condemnation proceedings,
20 including quick-take proceedings, to acquire property under
21 the power of eminent domain without first having obtained the
22 approval by ordinance of:

23 (1) the corporate authorities of the municipality in
24 which the property is located, if the property is located
25 entirely within a municipality;

26 (2) the county board of the county in which the
27 property is located, if the property is located entirely
28 within an unincorporated area of the county; or

29 (3) the governing bodies of all municipalities and
30 counties in which the property is located, if the property
31 is not located entirely within a municipality or entirely
32 within an unincorporated area of a county.

1 The ordinance must include a requirement that the unit of
2 local government must initiate negotiations to purchase the
3 property within the time period specified in the ordinance,
4 which shall not exceed one year after the date on which the
5 ordinance is adopted.

6 (c) No unit of local government or school district may
7 condemn property under the power of eminent domain, including
8 under quick-take proceedings, unless it has complied with all
9 of the following procedures:

10 (1) As soon as practical after making any public
11 announcement regarding its intention to acquire property,
12 the unit of local government or school district must notify
13 the landowners of all subject properties of its intentions
14 to acquire the property and its actions and anticipated
15 actions in furtherance of those intentions.

16 (2) The unit of local government or school district
17 must notify each owner of an interest in the property, by
18 certified mail, at least 5 days before commencing
19 negotiations, of its intention to enter into negotiations
20 to acquire the property. The notice must advise the owner
21 that the owner may wish to seek legal or other counsel
22 prior to negotiations.

23 (3) The unit of local government or school district
24 must cause notice of its intent to acquire the property by
25 condemnation to be published in a newspaper of general
26 circulation in the territory in which the property is
27 located. Publication must be made at least 10 days prior to
28 the public hearing required under item (4) and must give
29 notice of the time and place of the public hearing.

30 (4) After providing the notices required under items
31 (1) through (3), the unit of local government or school
32 district must hold at least one public hearing, at the
33 place at which it normally holds its business meetings, on
34 the question of its acquisition of the property by
35 condemnation.

36 (5) After the unit of local government or school

1 district has held a least one public hearing under item
2 (4), in order to proceed with the acquisition of the
3 property, the chief elected official of the municipality or
4 county must submit to all owners of an interest in the
5 property to be acquired and to their respective legal
6 counsel a sworn, notarized affidavit that contains, or has
7 attached as an incorporated exhibit, all of the following
8 items:

9 (A) The legal description of the property.

10 (B) The street address of the property.

11 (C) The current name, address, and telephone
12 number of each owner of an interest in the property.

13 (D) A statement of the date and location of each
14 public hearing held under item (4).

15 (E) A statement, with supporting documentation and
16 illustrations, of the public use for which the unit of
17 local government or school district seeks to acquire
18 the property.

19 (F) A map of the area in which the property to be
20 acquired is located, showing the location of the
21 property.

22 (G) A certified appraisal of the property by a real
23 estate appraiser who is certified or licensed under the
24 Real Estate Appraiser Licensing Act of 2002.

25 (H) A copy of the ordinance adopted by the
26 municipality or county under subsection (b).

27 (I) A copy of each notice sent to any person with
28 an interest in the property under items (1) and (2).

29 (J) The summary of rights and remedies published by
30 the Illinois Attorney General in accordance with
31 Section 7-102.7.

32 (d) Each affidavit submitted by a unit of local government
33 or school district pursuant to this Section and all documents
34 and other items submitted with the affidavit must be made
35 available to the public, upon request, for inspection and
36 copying at the business office of the unit of local government

1 or school district during regular business hours.

2 (e) The changes made by this amendatory Act of the 94th
3 General Assembly to Article 7 of the Code of Civil Procedure
4 apply only to cases commenced and complaints filed on or after
5 the effective date of this amendatory Act of the 94th General
6 Assembly.

7 (735 ILCS 5/7-102.6 new)

8 Sec. 7-102.6. Reimbursement of appraisal costs, legal
9 fees, and relocation expenses.

10 (a) If a condemning authority acquires property by purchase
11 under threat of eminent domain or exercises the power of
12 eminent domain to acquire property by verdict or judgment,
13 including under quick-take proceedings, each person with an
14 interest in the property shall be reimbursed, as a part of just
15 compensation, for related appraisal costs and reasonable
16 attorney's fees.

17 (b) If a condemning authority acquires property by purchase
18 under threat of eminent domain or exercises the power of
19 eminent domain to acquire property by verdict or judgment,
20 including under quick-take proceedings, each person with an
21 interest in the property may be reimbursed, as a part of just
22 compensation, for related relocation expenses, in the same
23 manner as provided in the federal Uniform Relocation Assistance
24 and Real Property Acquisition Policies Act of 1970.

25 (735 ILCS 5/7-102.7 new)

26 Sec. 7-102.7. Published summary of rights and remedies. The
27 Office of the Attorney General shall publish a summary of the
28 rights and remedies available for property owners subject to
29 acquisition by a unit of local government or school district
30 under the power of eminent domain. The summary shall include,
31 but not be limited to, the processes and requirements outlined
32 in Section 7-102.4. Each unit of local government or school
33 district seeking to acquire property under the power of eminent
34 of domain shall include this information with the notification

1 required to be sent to each owner of an interest in the
2 property under item (1) of subsection (d) of Section 7-102.4 of
3 this Article.

4 (735 ILCS 5/7-102.8 new)

5 Sec. 7-102.8. Regulations adversely affecting just
6 compensation. The court may dismiss a complaint for
7 condemnation, including under quick-take proceedings, if it
8 finds that the condemning authority or any other governmental
9 entity has exercised or failed to exercise a regulatory power
10 for the purpose of holding down or diminishing just
11 compensation for the property that the condemning authority
12 seeks to obtain.

13 (735 ILCS 5/7-102.9 new)

14 Sec. 7-102.9. Sale of property to private party.

15 (a) If a condemning authority that has acquired property
16 either (i) as a result of a verdict or judgment under this
17 Article or (ii) voluntarily from a property owner after the
18 owner was notified of the intention to exercise the power of
19 eminent domain, then the a condemning authority shall not
20 resell that property to a private party unless each property
21 owner that held title to an interest in the subject property is
22 first allowed a reasonable opportunity to repurchase his or her
23 interest in the subject property on the same terms on which the
24 condemning authority acquired it.

25 (b) This Section does not apply to: (i) property owners
26 whose property was acquired as part of a comprehensive
27 long-range plan for the redevelopment of a blighted area and
28 who received notice of that purpose prior to the transfer of
29 the property; and (ii) property owners whose property was taken
30 by a public utility pursuant to a grant of authority to
31 exercise the power of eminent domain authorized in Article VIII
32 of the Public Utilities Act.

33 (735 ILCS 5/7-102.10 new)

1 Sec. 7-102.10. Dismissal; abandonment.

2 (a) This Section applies to all condemnation proceedings,
3 including quick take proceedings.

4 (b) Except as otherwise provided in subsection (c), at no
5 time after a complaint for condemnation has been filed shall
6 the plaintiff have the right to dismiss the complaint or to
7 abandon the proceedings as to all or any part of the property
8 taken, except upon the consent of all parties to the proceeding
9 whose interests would be affected by the dismissal or
10 abandonment.

11 (c) Notwithstanding the provisions of subsection (b), if
12 the plaintiff is a public utility authorized by a grant of
13 authority issued pursuant to Article VII of the Public
14 Utilities Act, the plaintiff shall not have the right to
15 dismiss the complaint or to abandon the proceeding, as to all
16 or any part of the property taken, until after taking
17 possession of the property pursuant to an order of taking,
18 except upon the consent of all parties to the proceeding whose
19 interests would be affected by the dismissal or abandonment.

20 (735 ILCS 5/7-102.11 new)

21 Sec. 7-102.11. Late payment by condemning authority. If a
22 verdict, judgment, or agreed judgment is entered by the court
23 regarding a complaint for condemnation filed under this Article
24 and if the condemning authority fails to deposit the final
25 compensation within the time provided in the order, the
26 condemning authority shall be liable for the costs, expenses,
27 and reasonable attorney's fees incurred by the landowner in
28 obtaining deposit of the amount specified in the verdict,
29 judgment, or agreed judgment.

30 (735 ILCS 5/7-121) (from Ch. 110, par. 7-121)

31 Sec. 7-121. Value.

32 (a) Except as to property designated as possessing a
33 special use and except as provided in subsections (b) and (c),
34 the fair cash market value of property in a proceeding in

1 eminent domain shall be the amount of money which a purchaser,
2 willing but not obligated to buy the property, would pay to an
3 owner willing but not obliged to sell in a voluntary sale,
4 which amount of money shall be determined and ascertained as of
5 the date of filing the complaint to condemn. In the
6 condemnation of property for a public improvement there shall
7 be excluded from such amount of money any appreciation in value
8 proximately caused by such improvement, and any depreciation in
9 value proximately caused by such improvement. However, such
10 appreciation or depreciation shall not be excluded where
11 property is condemned for a separate project conceived
12 independently of and subsequent to the original project.

13 (b) Sales of comparable property that were initiated prior
14 to filing the complaint and were completed after the complaint
15 for condemnation of the subject property has been filed under
16 this Article are admissible as evidence in the condemnation
17 proceeding on the same terms as sales of comparable property
18 completed before the complaint for condemnation is filed.

19 (c) In addition to sales of comparable property, bona fide
20 offers to purchase the subject property or comparable adjacent
21 properties, including options to purchase, that were made or
22 offered within a reasonable time prior to filing the complaint
23 for condemnation of the subject property are admissible as
24 evidence in a condemnation proceeding.

25 (Source: P.A. 82-280.)

26 (735 ILCS 5/7-900 new)

27 Sec. 7-900. Home rule. The authorization of the use of
28 eminent domain proceedings to take or damage property is an
29 exclusive power and function of the State. Neither the State, a
30 unit of local government, including a home rule unit, nor a
31 school district may exercise the power of eminent domain
32 otherwise than as provided in this Article. This Article is a
33 denial and limitation of home rule powers and functions under
34 subsection (h) of Section 6 of Article VII of the Illinois
35 Constitution.

1 (735 ILCS 5/7-110 rep.)

2 Section 10. The Code of Civil Procedure is amended by
3 repealing Section 7-110.

4 Section 90. The State Mandates Act is amended by adding
5 Section 8.30 as follows:

6 (30 ILCS 805/8.30 new)

7 Sec. 8.30. Exempt mandate. Notwithstanding Sections 6 and 8
8 of this Act, no reimbursement by the State is required for the
9 implementation of any mandate created by this amendatory Act of
10 the 94th General Assembly.

11 Section 900. Applicability. The changes made by this
12 amendatory Act of the 94th General Assembly to Article 7 of the
13 Code of Civil Procedure apply only to cases commenced and
14 complaints filed on or after the effective date of this
15 amendatory Act of the 94th General Assembly.

16 Section 999. Effective date. This Act takes effect upon
17 becoming law.