

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 Sections 5-5-5, 10-5-60, 10-5-105, 10-5-110, and 15-1-5 as
6 follows:

7 (735 ILCS 30/5-5-5)

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

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

14 (a-5) Subsections (b), (c), (d), (e), and (f) of this
15 Section do not apply to the acquisition of property under the
16 O'Hare Modernization Act, Section 4-505 of the Illinois Highway
17 Code, the Illinois Aeronautics Act, or for the purpose of
18 development or redevelopment of any publicly owned airport. A
19 condemning authority may exercise the power of eminent domain
20 for the acquisition or damaging of property under the O'Hare
21 Modernization Act, Section 4-505 of the Illinois Highway Code,
22 the Illinois Aeronautics Act, or for the purpose of development
23 or redevelopment of any publicly owned airport as provided for

1 by law in effect prior to the effective date of this Act.

2 (a-10) Subsections (b), (c), (d), (e), and (f) of this
3 Section do not apply to the acquisition or damaging of property
4 in furtherance of the goals and objectives of an existing tax
5 increment allocation redevelopment plan. A condemning
6 authority may exercise the power of eminent domain for the
7 acquisition of property in furtherance of an existing tax
8 increment allocation redevelopment plan as provided for by law
9 in effect prior to the effective date of this Act.

10 As used in this subsection, "existing tax increment
11 allocation redevelopment plan" means a redevelopment plan that
12 was adopted under the Tax Increment Allocation Redevelopment
13 Act (Article 11, Division 74.4 of the Illinois Municipal Code)
14 prior to April 15, 2006 and for which property assembly costs
15 were, before that date, included as a budget line item in the
16 plan or described in the narrative portion of the plan as part
17 of the redevelopment project, but does not include (i) any
18 additional area added to the redevelopment project area on or
19 after April 15, 2006, (ii) any subsequent extension of the
20 completion date of a redevelopment plan beyond the estimated
21 completion date established in that plan prior to April 15,
22 2006, (iii) any acquisition of property in a conservation area
23 for which the condemnation complaint is filed more than 12
24 years after the effective date of this Act, or (iv) any
25 acquisition of property in an industrial park conservation
26 area.

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

4 (b) If the exercise of eminent domain authority is to
5 acquire property for public ownership and control, then the
6 condemning authority must prove that (i) the acquisition of the
7 property is necessary for a public purpose and (ii) the
8 acquired property will be owned and controlled by the
9 condemning authority or another governmental entity.

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

20 An acquisition of property primarily for the purpose of the
21 elimination of blight is rebuttably presumed to be for a public
22 purpose and primarily for the benefit, use, or enjoyment of the
23 public under this subsection.

24 Any challenge to the existence of blighting factors alleged
25 in a complaint to condemn under this subsection shall be raised
26 within 6 months of the filing date of the complaint to condemn,

1 and if not raised within that time the right to challenge the
2 existence of those blighting factors shall be deemed waived.

3 Evidence that the Illinois Commerce Commission has granted
4 a certificate or otherwise made a finding of public convenience
5 and necessity for an acquisition of property (or any right or
6 interest in property) for private ownership or control
7 (including, without limitation, an acquisition for which the
8 use of eminent domain is authorized under the Public Utilities
9 Act, the Telephone Company Act, or the Electric Supplier Act)
10 to be used for utility purposes creates a rebuttable
11 presumption that such acquisition of that property (or right or
12 interest in property) is (i) primarily for the benefit, use, or
13 enjoyment of the public and (ii) necessary for a public
14 purpose.

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

26 (1) the Public Utilities Act,

1 (2) the Telephone Company Act,

2 (3) the Electric Supplier Act,

3 (4) the Railroad Terminal Authority Act,

4 (5) the Grand Avenue Railroad Relocation Authority
5 Act,

6 (6) the West Cook Railroad Relocation and Development
7 Authority Act,

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

9 (8) Section 17 or 18 of the Railroad Incorporation Act,

10 (9) Section 18c-7501 of the Illinois Vehicle Code.

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

1 at the time of the designation under item (ii) or at any time
2 thereafter; and (iv) prove by a preponderance of the evidence
3 at least one of the following:

4 (A) that it has entered into an express written
5 agreement in which a private person or entity agrees to
6 undertake a development project within the blighted area
7 that specifically details the reasons for which the
8 property or rights in that property are necessary for the
9 development project;

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

18 (C) that (1) the acquired property will be used in the
19 development of a project that is consistent with the land
20 uses set forth in a comprehensive redevelopment plan
21 prepared in accordance with the applicable statute
22 authorizing the condemning authority to exercise the power
23 of eminent domain and is consistent with the goals and
24 purposes of that comprehensive redevelopment plan, and (2)
25 an enforceable written agreement, deed restriction, or
26 similar encumbrance has been or will be executed and

1 recorded against the acquired property to assure that the
2 project and the use of the property remain consistent with
3 those land uses, goals, and purposes for a period of at
4 least 40 years, which execution and recording shall be
5 included as a requirement in any final order entered in the
6 condemnation proceeding.

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

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

22 (e) If the exercise of eminent domain authority is to
23 acquire property for private ownership or control and if the
24 primary purpose of the acquisition is one of the purposes
25 specified in item (iii) of this subsection and the condemning
26 authority elects to proceed under this subsection, then the

1 condemning authority must prove by a preponderance of the
2 evidence that: (i) the acquisition of the property is necessary
3 for a public purpose; (ii) an enforceable written agreement,
4 deed restriction, or similar encumbrance has been or will be
5 executed and recorded against the acquired property to assure
6 that the project and the use of the property remain consistent
7 with the applicable purpose specified in item (iii) of this
8 subsection for a period of at least 40 years, which execution
9 and recording shall be included as a requirement in any final
10 order entered in the condemnation proceeding; and (iii) the
11 acquired property will be one of the following:

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

21 (2) used primarily for public airport, road, parking,
22 or mass transportation purposes and sold or leased to a
23 private party in a sale-leaseback, lease-leaseback, or
24 similar structured financing;

25 (3) owned or used by a public utility or electric
26 cooperative for utility purposes;

1 (4) owned or used by a railroad for passenger or
2 freight transportation purposes;

3 (5) sold or leased to a private party that operates a
4 water supply, waste water, recycling, waste disposal,
5 waste-to-energy, or similar facility;

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

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

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

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

20 (f) If the exercise of eminent domain authority is to
21 acquire property for public ownership and private control and
22 if the primary purpose of the acquisition is one of the
23 purposes specified in item (iii) of this subsection and the
24 condemning authority elects to proceed under this subsection,
25 then the condemning authority must prove by a preponderance of
26 the evidence that: (i) the acquisition of the property is

1 necessary for a public purpose; (ii) the acquired property will
2 be owned by the condemning authority or another governmental
3 entity; and (iii) the acquired property will be controlled by a
4 private party that operates a business or facility related to
5 the condemning authority's operation of a university, medical
6 district, hospital, exposition or convention center, mass
7 transportation facility, or airport, including, but not
8 limited to, a medical clinic, research and development center,
9 food or commercial concession facility, social service
10 facility, maintenance or storage facility, cargo facility,
11 rental car facility, bus facility, taxi facility, flight
12 kitchen, fixed based operation, parking facility, refueling
13 facility, water supply facility, and railroad tracks and
14 stations.

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

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

19 (735 ILCS 30/10-5-60) (was 735 ILCS 5/7-121)

20 Sec. 10-5-60. Value. Except as to property designated as
21 possessing a special use, the fair cash market value of
22 property in a proceeding in eminent domain shall be the amount
23 of money that a purchaser, willing, but not obligated, to buy
24 the property, would pay to an owner willing, but not obliged,
25 to sell in a voluntary sale.

1 For the acquisition or damaging of property under the
2 O'Hare Modernization Act, Section 4-505 of the Illinois Highway
3 Code, the Illinois Aeronautics Act, or for the purpose of
4 development or redevelopment of any publicly owned airport, the
5 amount shall be determined as of the date of filing the
6 complaint to condemn. For the acquisition of other property,
7 the amount shall be determined and ascertained as of the date
8 of filing the complaint to condemn, except that:

9 (i) in the case of property not being acquired under
10 Article 20 (quick-take), if the trial commences more than 2
11 years after the date of filing the complaint to condemn,
12 the court may, in the interest of justice and equity,
13 declare a valuation date no sooner than the date of filing
14 the complaint to condemn and no later than the date of
15 commencement of the trial; and

16 (ii) in the case of property that is being acquired
17 under Article 20 (quick-take), if the trial commences more
18 than 2 years after the date of filing the complaint to
19 condemn, the court may, in the interest of justice and
20 equity, declare a valuation date no sooner than the date of
21 filing the complaint to condemn and no later than the date
22 on which the condemning authority took title to the
23 property.

24 In the condemnation of property for a public improvement,
25 there shall be excluded from the fair cash market value of the
26 property any appreciation in value proximately caused by the

1 improvement and any depreciation in value proximately caused by
2 the improvement. However, such appreciation or depreciation
3 shall not be excluded when property is condemned for a separate
4 project conceived independently of and subsequent to the
5 original project.

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

7 (735 ILCS 30/10-5-105)

8 Sec. 10-5-105. Sale of certain property acquired by
9 condemnation.

10 (a) This Section applies only to property that (i) has been
11 acquired after the effective date of this Act by condemnation
12 or threat of condemnation, (ii) was acquired for public
13 ownership and control by the condemning authority or another
14 public entity, and (iii) has been under the ownership and
15 control of the condemning authority or that other public entity
16 for a total of less than 5 years.

17 As used in this Section, "threat of condemnation" means
18 that the condemning authority has made an offer to purchase
19 property and has the authority to exercise the power of eminent
20 domain with respect to that property.

21 (b) Any governmental entity seeking to dispose of property
22 to which this Section applies must dispose of that property in
23 accordance with this Section, unless disposition of that
24 property is otherwise specifically authorized or prohibited by
25 law enacted by the General Assembly before, on, or after the

1 effective date of this Act.

2 (c) The sale or public auction by the State of property to
3 which this Section applies must be conducted in the manner
4 provided in the State Property Control Act for the disposition
5 of surplus property.

6 (d) The sale or public auction by a municipality of
7 property to which this Section applies must be conducted in
8 accordance with Section 11-76-4.1 or 11-76-4.2 of the Illinois
9 Municipal Code.

10 (e) The sale or public auction by any other unit of local
11 government or school district of property to which this Section
12 applies must be conducted in accordance with this subsection
13 (e). The corporate authorities of the unit of local government
14 or school district, by resolution, may authorize the sale or
15 public auction of the property as surplus public real estate.
16 The value of the real estate shall be determined by a written
17 MAI-certified appraisal or by a written certified appraisal of
18 a State-certified or State-licensed real estate appraiser. The
19 appraisal shall be available for public inspection. The
20 resolution may direct the sale to be conducted by the staff of
21 the unit of local government or school district; by listing
22 with local licensed real estate agencies, in which case the
23 terms of the agent's compensation shall be included in the
24 resolution; or by public auction. The resolution shall be
25 published at the first opportunity following its passage in a
26 newspaper or newspapers published in the county or counties in

1 which the unit of local government or school district is
2 located. The resolution shall also contain pertinent
3 information concerning the size, use, and zoning of the real
4 estate and the terms of sale. The corporate authorities of the
5 unit of local government or school district may accept any
6 contract proposal determined by them to be in the best interest
7 of the unit of local government or school district by a vote of
8 two-thirds of the members of the corporate authority of the
9 unit of local government or school district then holding
10 office, but in no event at a price less than 80% of the
11 appraised value.

12 (f) This Section does not apply to the acquisition or
13 damaging of property under the O'Hare Modernization Act,
14 Section 4-505 of the Illinois Highway Code, the Illinois
15 Aeronautics Act, or for the purpose of development or
16 redevelopment of any publicly owned airport.

17 (Source: P.A. 94-1055, eff. 1-1-07; 95-331, eff. 8-21-07.)

18 (735 ILCS 30/10-5-110)

19 Sec. 10-5-110. Offers of settlement by defendant;
20 attorney's fees and litigation expenses.

21 (a) This Section applies only to proceedings for the
22 acquisition of property for private ownership or control that
23 are subject to subsection (c), (d), (e), or (f) of Section
24 5-5-5.

25 (b) At any time between (i) the close of discovery in

1 accordance with Supreme Court Rule 218(c), as now or hereafter
2 amended, or another date set by the court or agreed to by the
3 parties, and (ii) 14 days before the commencement of trial to
4 determine final just compensation, any defendant may serve upon
5 the plaintiff a written offer setting forth the amount of
6 compensation that the defendant will accept for the taking of
7 that defendant's interest in the property. If the defendant
8 does not make such an offer, the defendant shall not be
9 entitled to the attorney's fees and other reimbursement
10 provided under subsection (e) of this Section.

11 (c) If, within 10 days after service of the offer, the
12 plaintiff serves written notice upon that defendant that the
13 offer is accepted, then either of those parties may file a copy
14 of the offer and a copy of the notice of acceptance together
15 with proof of service of the notice. The court shall then enter
16 judgment.

17 (d) An offer that is not accepted within the 10-day period
18 is deemed to be withdrawn and evidence of the offer is not
19 admissible at trial.

20 (e) If a plaintiff does not accept an offer as provided in
21 subsection (c) and if the final just compensation for the
22 defendant's interest is determined by the trier of fact to be
23 equal to or in excess of the amount of the defendant's last
24 written offer under subsection (b), then the court must order
25 the plaintiff to pay to the defendant that defendant's
26 attorney's fees as calculated under subsection (f) of this

1 Section. The plaintiff shall also pay to the defendant that
2 defendant's reasonable costs and litigation expenses,
3 including, without limitation, expert witness and appraisal
4 fees, incurred after the making of the defendant's last written
5 offer under subsection (b).

6 (f) Any award of attorney's fees under this Section shall
7 be based solely on the net benefit achieved for the property
8 owner, except that the court may also consider any non-monetary
9 benefits obtained for the property owner through the efforts of
10 the attorney to the extent that the non-monetary benefits are
11 specifically identified by the court and can be quantified by
12 the court with a reasonable degree of certainty. "Net benefit"
13 means the difference, exclusive of interest, between the final
14 judgment or settlement and the last written offer made by the
15 condemning authority before the filing date of the condemnation
16 complaint. The award shall be calculated as follows, subject to
17 the Illinois Rules of Professional Conduct:

18 (1) 33% of the net benefit if the net benefit is
19 \$250,000 or less;

20 (2) 25% of the net benefit if the net benefit is more
21 than \$250,000 but less than \$1 million; or

22 (3) 20% of the net benefit if the net benefit is \$1
23 million or more.

24 (g) This Section does not apply to the acquisition of
25 property under the O'Hare Modernization Act, Section 4-505 of
26 the Illinois Highway Code, the Illinois Aeronautics Act, or for

1 the purpose of development or redevelopment of any publicly
2 owned airport.

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

4 (735 ILCS 30/15-1-5)

5 Sec. 15-1-5. Grants of power in other statutes; this Act
6 controls. The State of Illinois and its various subdivisions
7 and agencies, and all units of local government, school
8 districts, and other entities, have the powers of condemnation
9 and eminent domain that are (i) expressly provided in this Act
10 or (ii) expressly provided in any other provision of law. Those
11 powers may be exercised, however, only in accordance with this
12 Act. If any power of condemnation or eminent domain that arises
13 under any other provision of law is in conflict with this Act,
14 this Act controls. This Section does not apply to the
15 acquisition or damaging of property under the O'Hare
16 Modernization Act, Section 4-505 of the Illinois Highway Code,
17 the Illinois Aeronautics Act, or for the purpose of development
18 or redevelopment of any publicly owned airport.

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

20 Section 99. Effective date. This Act takes effect upon
21 becoming law.