

HB5897



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5897

Introduced 2/16/2012, by Rep. Thomas Morrison

SYNOPSIS AS INTRODUCED:

735 ILCS 30/5-5-5

Amends the Eminent Domain Act. Provides that in addition to all other limitations, a condemning authority other than the State may not take or damage property that is agricultural land by the exercise of the power of eminent domain for the establishment of a greenway. Defines terms. Effective immediately.

LRB097 19377 AJO 64630 b

A BILL FOR

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 (a-15) In addition to all other limitations and
25 requirements, a condemning authority other than the State may
26 not take or damage property that is agricultural land by the

1 exercise of the power of eminent domain for the establishment
2 of a greenway.

3 As used in this subsection (a-15):

4 "Agricultural land" means any property used solely for
5 the growing and harvesting of crops; for the feeding,
6 breeding and management of livestock; for dairying or for
7 any other agricultural or horticultural use or combination
8 thereof; including, but not limited to, hay, grain, fruit,
9 truck or vegetable crops, floriculture, mushroom growing,
10 plant or tree nurseries, orchards, forestry, sod farming
11 and greenhouses; the keeping, raising and feeding of
12 livestock or poultry, including dairying, poultry, swine,
13 sheep, beef cattle, ponies or horses, fur farming, bees,
14 fish and wildlife farming; and any property left fallow
15 near a river, stream, or creek for soil conservation or
16 other purpose related to any of the activities mentioned in
17 this definition.

18 "Greenway" means a corridor of undeveloped land along a
19 river, stream, or creek that is reserved for recreational
20 use or for environmental protection.

21 "Recreational use" includes, but is not limited to
22 hunting, fishing, boating, camping, picnicking, hiking,
23 biking, walking, horseback riding, pleasure driving,
24 nature study, water skiing, festivals, public gatherings
25 and visiting historical, archaeological, scenic or
26 scientific sites, or for any purpose, including but not

1 limited to educational, vocational and religious
2 activities and assemblies.

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

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

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

23 Any challenge to the existence of blighting factors alleged
24 in a complaint to condemn under this subsection shall be raised
25 within 6 months of the filing date of the complaint to condemn,
26 and if not raised within that time the right to challenge the

1 existence of those blighting factors shall be deemed waived.

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

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

- 25 (1) the Public Utilities Act,
26 (2) the Telephone Company Act,

- 1 (3) the Electric Supplier Act,
- 2 (4) the Railroad Terminal Authority Act,
- 3 (5) the Grand Avenue Railroad Relocation Authority
- 4 Act,
- 5 (6) the West Cook Railroad Relocation and Development
- 6 Authority Act,
- 7 (7) Section 4-505 of the Illinois Highway Code,
- 8 (8) Section 17 or 18 of the Railroad Incorporation Act,
- 9 (9) Section 18c-7501 of the Illinois Vehicle Code.

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

1 thereafter; and (iv) prove by a preponderance of the evidence
2 at least one of the following:

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

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

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

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

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

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

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

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

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

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

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

26 (4) owned or used by a railroad for passenger or

1 freight transportation purposes;

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

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

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

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

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

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

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

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

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

18 Section 99. Effective date. This Act takes effect upon
19 becoming law.