

[First Reprint]

SENATE, No. 2743

STATE OF NEW JERSEY
212th LEGISLATURE

INTRODUCED MAY 24, 2007

Sponsored by:

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District 31 (Hudson)

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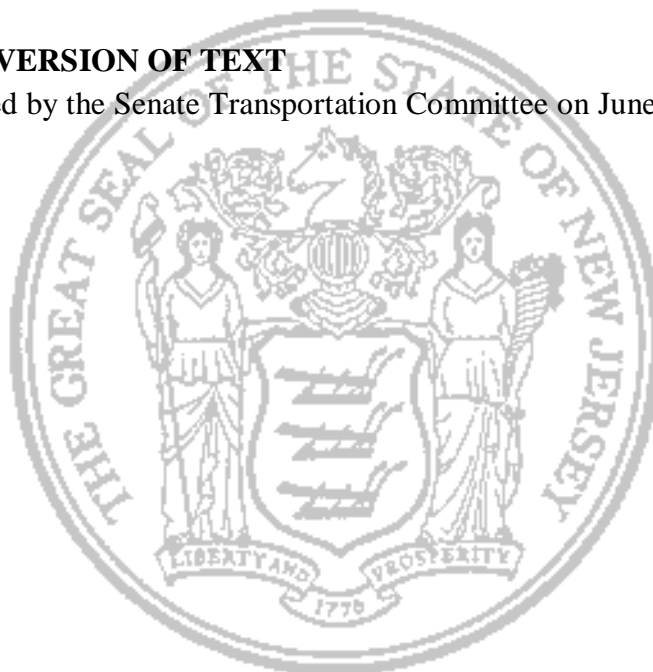
Assemblyman Diegnan

SYNOPSIS

Revises procedures for condemnation of certain property and use of the power of eminent domain by railroads.

CURRENT VERSION OF TEXT

As reported by the Senate Transportation Committee on June 14, 2007, with amendments.



(Sponsorship Updated As Of: 1/8/2008)

1 AN ACT concerning the powers of condemnation and eminent
2 domain, and amending P.L.1962, c.198.

3

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

6

7 1. Section 60 of P.L.1962, c.198 (C.48:12-35.1) is amended to
8 read as follows:

9 60. Any railroad utility incorporated in this State or in any other
10 State and operating in New Jersey may exercise the power of
11 eminent domain as provided ¹[in sections 48 and 49 **hereof**] of
12 P.L.1962, c.198 (C.48:3-17.6 and 48:3-17.7)] herein¹ in taking: (a)
13 any land and property required for the right-of-way of its main line
14 and branches, not exceeding 200 feet in width, unless more shall be
15 required for slopes of cuts or embankments or retaining walls[,
16 and]; (b) all such other land and property adjoining such right-of-
17 way as exigencies of business may demand for the erection or
18 expansion of freight and passenger depots and all other railroad
19 purposes, provided, however, that any railroad utility exercising
20 condemnation for this purpose must demonstrate to the ¹[board]
21 Department of Transportation¹ that alternative property suitable for
22 the specific proposed use of the property to be taken is unavailable,
23 either through on-site accommodation or through voluntary sale of
24 alternative, reasonably situated property, and that the interest in the
25 property to be taken does not exceed what is necessary for the
26 proposed use, and shall also demonstrate to the ¹[board]
27 Department of Transportation¹ at ¹[a public] an informal¹ hearing
28 the specific use to be made of the land or other property or interest
29 to be acquired and that such proposed use is necessary and
30 consistent with the purposes enumerated for such railroad utility
31 and with the extent of the land or other property or interest to be
32 condemned; and (c) any land and property necessary to comply with
33 any order ¹, determination, rule or regulation¹ of the ¹[Board of
34 Public **Utility Commissioners** **Utilities**] Department of
35 Transportation¹.

36 ¹Thereafter, the application for approval shall be considered a
37 contested case pursuant to the "Administrative Procedure Act," P.L.
38 1968, c.410 (C. 52:14B-1 et seq.). A hearing, upon the written
39 request by the railroad utility to condemn and challenge thereto,
40 shall be heard by the Office of Administrative Law pursuant to
41 section 9 of P.L.1968, c. 410 (C. 52:14B-9), after the informal
42 hearing is completed before the Department of Transportation.
43 Timely notice by the railroad utility must be provided to a

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate STR committee amendments adopted June 14, 2007.

1 prospective condemnee holding a fee interest, easement, or
2 leasehold in the property sought to be condemned by the railroad
3 utility.

4 At the hearing held before the Office of Administrative Law, the
5 railroad utility shall make the same demonstrations of satisfying the
6 prescribed conditions as set forth above. The burden of proof shall
7 be upon the railroad utility no matter who makes the request for a
8 formal hearing. The Office of Administrative Law shall then make
9 a recommendation to the Commissioner of Transportation as to
10 whether the railroad utility has met its statutory obligations to
11 enable it to file a condemnation proceeding to acquire real property
12 and that a determination of necessity should be issued. The
13 determination shall become final on the 45th day after the release of
14 the initial determination of necessity by the Department of
15 Transportation, unless the railroad utility or any other interested
16 party whose real property, lease, or easement may be impacted by
17 the condemnation seeks, in writing, from the Department of
18 Transportation a formal hearing before the Office of Administrative
19 Law within that 45 day period. Any appeal of a final determination
20 made by the Department of Transportation or by the Commissioner
21 of Transportation shall be made to the Superior Court, Appellate
22 Division based upon the record below. No informal or formal
23 hearing shall be held until written notice by certified mail or by
24 private courier has been demonstrated as being sent by the railroad
25 utility to anyone holding an interest in the real estate to be acquired
26 whether in fee, easement, or by lease at their current known
27 address, and if not known by publication based upon production of
28 a certification of inquiry, as well as to the municipality, municipal
29 planning board and the county and county planning board where the
30 property is located.¹

31 In addition, any railroad utility shall have the right to take and
32 acquire, by the exercise of the power of eminent domain as
33 provided in ¹[sections 48 and 49 [hereof] of P.L.1962, c.198] this
34 section and the “Eminent Domain Act of 1971,” P.L. 1971,c. 361
35 (C.20:3-1 et seq.)¹, any land, property or private road as shall be
36 necessary for any branch line or lines, spur or sidetrack to the
37 premises of a horse race track as provided in **[section] R.S.48:12-**
38 **32.1**, but not in excess of 200 feet in width, for such branch line or
39 lines, spur or sidetrack of railroad; provided that additional land
40 may be so acquired where necessary for the slopes of cuts or
41 embankments or for retaining walls.

42 When the line of any railroad utility of the State is constructed to
43 the Delaware river and extension of such line is to be undertaken
44 pursuant to **[section] R.S.48:12-44**, the utility may acquire, by the
45 exercise of the power of eminent domain as provided in ¹[sections
46 48 and 49 [hereof] of P.L.1962, c.198] this section¹, such lands as
47 may be necessary upon filing and recording the survey of the route

1 with the Secretary of State and in the office of the clerk of the
2 county wherein the lands are situate, and making the deposit
3 required by **[section] R.S.48:12-25 [of this Title]**.

4 No railroad utility shall take, use or occupy by condemnation any
5 franchise, land or located route of any other railroad or any utility
6 chartered for the purpose of facilitating transportation, except for
7 the purpose of crossing such land or route and except the land of
8 any such utility not necessary for the purpose of its franchise. ¹No
9 railroad utility shall take or acquire by condemnation any land,
10 property, easements, or other interest belonging to the State of New
11 Jersey, or any authority, corporation, or other instrumentality of the
12 State.

13 The Department of Transportation and its commissioner are
14 hereby authorized and empowered to determine the necessity as
15 aforesaid for the use of the land, easements, or other property or
16 interests therein so sought to be condemned, to establish the form
17 and method of any application for such condemnation and the time
18 and the manner of notice of the application and scheduling of the
19 initial informal hearing or any hearing before the Office of
20 Administrative Law, and to enforce the provisions of this section
21 the commissioner may designate a division or office of the
22 department to make the determination of necessity. The
23 Commissioner of Transportation may prescribe any rules,
24 regulation, or procedure applicable to an application by a railroad
25 utility to commence a condemnation proceeding including, but not
26 limited to, how the railroad utility shall demonstrate its satisfaction
27 of the above stated conditions for commencing a condemnation
28 proceeding; to any challenge made by a prospective condemnee
29 holding fee interest, easement, or lease in the property sought to be
30 condemned by the railroad utility; and to the provision of notice to
31 interested parties. The New Jersey Transit Corporation shall not be
32 considered a railroad utility for the purposes of this section.¹

33 ¹**[Nothing herein shall be deemed to limit the]** The¹ powers of
34 condemnation vested in railroads under ¹this section shall govern
35 over¹ any provisions of Title 48 as amended and supplemented by
36 this act and which have not been repealed.

37 (cf: P.L.1967, c.155, s.1)

38

39 2. This act shall take effect immediately.