

CHAPTER 290

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

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

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

C.48:12-35.1 Authority and extent of condemnation.

60. Any railroad utility incorporated in this State or in any other state and operating in New Jersey may exercise the power of eminent domain as provided herein in taking: (a) any land and property required for the right-of-way of its main line and branches, not exceeding 200 feet in width, unless more shall be required for slopes of cuts or embankments or retaining walls; (b) all such other land and property adjoining such right-of-way as exigencies of business may demand for the erection or expansion of freight and passenger depots and all other railroad purposes, provided, however, that any railroad utility exercising condemnation for this purpose must demonstrate to the Department of Transportation that alternative property suitable for the specific proposed use of the property to be taken is unavailable, either through on-site accommodation or through voluntary sale of alternative, reasonably situated property, and that the interest in the property to be taken does not exceed what is necessary for the proposed use, and shall also demonstrate to the Department of Transportation at an informal hearing the specific use to be made of the land or other property or interest to be acquired and that such proposed use is necessary and consistent with the purposes enumerated for such railroad utility and with the extent of the land or other property or interest to be condemned; and (c) any land and property necessary to comply with any order, determination, rule or regulation of the Department of Transportation.

Thereafter, the application for approval shall be considered a contested case pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). A hearing, upon the written request by the railroad utility to condemn and challenge thereto, shall be heard by the Office of Administrative Law pursuant to section 9 of P.L.1968, c.410 (C.52:14B-9), after the informal hearing is completed before the Department of Transportation. Timely notice by the railroad utility must be provided to a prospective condemnee holding a fee interest, easement, or leasehold in the property sought to be condemned by the railroad utility.

At the hearing held before the Office of Administrative Law, the railroad utility shall make the same demonstrations of satisfying the prescribed conditions as set forth above. The burden of proof shall be upon the railroad utility no matter who makes the request for a formal hearing. The Office of Administrative Law shall then make a recommendation to the Commissioner of Transportation as to whether the railroad utility has met its statutory obligations to enable it to file a condemnation proceeding to acquire real property and that a determination of necessity should be issued. The determination shall become final on the 45th day after the release of the initial determination of necessity by the Department of Transportation, unless the railroad utility or any other interested party whose real property, lease, or easement may be impacted by the condemnation seeks, in writing, from the Department of Transportation a formal hearing before the Office of Administrative Law within that 45-day period. Any appeal of a final determination made by the Department of Transportation or by the Commissioner of Transportation shall be made to the Superior Court, Appellate Division based upon the record below. No informal or formal hearing shall be held until written notice by certified mail or by private courier has been demonstrated as

being sent by the railroad utility to anyone holding an interest in the real estate to be acquired whether in fee, easement, or by lease at their current known address, and if not known by publication based upon production of a certification of inquiry, as well as to the municipality, municipal planning board and the county and county planning board where the property is located.

In addition, any railroad utility shall have the right to take and acquire, by the exercise of the power of eminent domain as provided in this section and the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.), any land, property or private road as shall be necessary for any branch line or lines, spur or sidetrack to the premises of a horse race track as provided in P.L.1947, c.17 (C.48:12-32.1), but not in excess of 200 feet in width, for such branch line or lines, spur or sidetrack of railroad; provided that additional land may be so acquired where necessary for the slopes of cuts or embankments or for retaining walls.

When the line of any railroad utility of the State is constructed to the Delaware river and extension of such line is to be undertaken pursuant to R.S.48:12-44, the utility may acquire, by the exercise of the power of eminent domain as provided in this section, such lands as may be necessary upon filing and recording the survey of the route with the Secretary of State and in the office of the clerk of the county wherein the lands are situate, and making the deposit required by R.S.48:12-25.

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

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

The powers of condemnation vested in railroads under this section shall govern over any provisions of Title 48 as amended and supplemented by this act and which have not been repealed.

2. This act shall take effect immediately.

Approved January 13, 2008.