

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 3257

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 19, 2006

The Assembly Commerce and Economic Development Committee reports favorably and with committee amendments Assembly, No. 3257.

Assembly, No. 3257, as amended by the committee, amends and supplements various parts of statutory law to provide greater accountability and transparency in the use of eminent domain by local governments in New Jersey.

In June, 2005, the United States Supreme Court decided the case of Kelo v. City of New London, Connecticut, 125 S.Ct. 2655 (2005), which dealt with the exercise of eminent domain by a local government to promote economic development. While the facts of that case are different than the law in New Jersey, the case provided an opportunity for the Legislature to examine the use of eminent domain by New Jersey municipalities exercising their redevelopment powers.

This bill does not seek to prevent the exercise of eminent domain, but it does seek to ensure that it is used more judiciously and produces equitable results. The criteria for finding property to be an “area in need of redevelopment” would be reorganized and certain criteria would be amended to remove the possibility of a property owner losing their homes simply because a “better” use could be envisioned by a local government official. Further, the ability to include non-qualifying parcels in an area in need of redevelopment would be limited to 20% of the land mass within the proposed redevelopment area. If eminent domain is going to be used, the bill would require that the redevelopment agreement contain a timeframe for the acquisition of such property and a requirement that all requests for the use of eminent domain be made within five years of the date of the redevelopment agreement. Awards for eminent domain would be based on the highest value of the property, either at the time of taking or the time of the adoption of the redevelopment plan and would be based on the uses permitted under the plan. Furthermore, residential property owners whose homes are taken by eminent domain would be ensured that compensation would at least equal the replacement value

of their home. Additionally, any resident dislocated by the use of eminent domain would be granted a right of first refusal to purchase or lease a unit within the redevelopment project that resulted in their displacement.

The notice provisions for designing and undertaking a redevelopment project would be greatly enhanced under the bill. The bill would require that the hearing notice be in a simple, clear and easily understandable format and would tell people that a consequence of the designation of an area as being in need of redevelopment could be the use of eminent domain. Prior to the hearing, all documents relevant to the determination of an area in need of redevelopment would be made available for public inspection and posted on the municipal website. At the hearing, all testimony would be provided under oath or affirmation and the hearing would be recorded or transcribed.

The bill would require an informational meeting before the process is formally begun for larger redevelopment projects. Notice to impacted property owners, including tenants, would be greatly expanded to include direct notice during, (1) the study of a proposed redevelopment area by a planning board, (2) the determination that an area is in need of redevelopment by the governing body, and (3) the formulation and adoption of a redevelopment plan. For the adoption of a redevelopment plan, such notice would also be required to identify which parcels within the redevelopment area would be subject to acquisition by eminent domain and inform notice recipients of the right to appeal the determination.

An additional public hearing would be required to be held within 60 days of undertaking the preparation of a redevelopment plan to afford public comment on the goals and content of the proposed plan. Notice of public hearing upon adoption of a redevelopment plan would notify those property owners whose properties do not exhibit blight conditions of the reasons why acquisition of their properties are needed for the redevelopment project.

Additionally, the bill would require all significant steps of the process to be undertaken by ordinance so that public hearings are held by the governing body at each critical point in the process. These amendments to the eminent domain and land use laws will add transparency to a process that is often subject to unnecessary miscommunication and will provide for the opportunity for greater public input and consensus.

The bill would also expand the scope of future redevelopment plans to identify, not just the benefits inherent in future redevelopment projects, but also the costs. In addition to an analysis of the land use controls, a redevelopment plan would be required to contain an inventory of environmental, historical and cultural assets within the redevelopment area, together with preservation and conservation strategies for such assets. Additionally, the redevelopment plan would

need to quantify the impact of the plan on surrounding areas and the legal obligations applicable to low and moderate income persons within the municipality and the relocation needs arising from any displacement of residents or businesses as a result of the plan. Finally, the redevelopment plan would need to document consistency with smart growth planning principles. These amendments are designed to ensure that local governing bodies consider all relevant factors before adopting a plan.

The bill would also establish a process for selecting redevelopers for redevelopment projects that involve a significant amount of land that is either municipally owned or could be assembled by a municipality using eminent domain. Other changes include expanding the criteria for areas in need of rehabilitation. Areas in need of rehabilitation exist today and can be subjected to the controls and visions set forth in the redevelopment plan. Municipalities have the same powers to implement a redevelopment plan for an area in need of rehabilitation as a redevelopment area, except that municipalities cannot exercise the power of eminent domain. The proposed changes are designed to permit certain parcels to be designated an area in need of rehabilitation if they would be qualified for designation as an area in need of redevelopment under current law, but would not support such designation under the proposed amendments. The bill would allow municipalities to identify areas that may be studied in the future for designation as redevelopment or rehabilitation areas when revising municipal master plans.

Finally, the bill would establish a new reporting requirement for municipalities that determine that an area is in need of redevelopment. The municipality would have to submit a map of the new redevelopment area to DCA, together with a preliminary investigation report and the ordinance declaring the area to be in need of redevelopment. Each municipality would also be required to report to DCA a record of each use of condemnation and the compensation paid. DCA would be required to prepare and to make publicly available a report portraying all the redevelopment areas in New Jersey and specify certain relevant data.

This bill would be effective on the first day of the first month that occurs at least 90 days following enactment. Recognizing that a redevelopment process contains three distinctive steps: designation of an area in need of redevelopment or rehabilitation, adoption of a redevelopment plan and authorization of a redevelopment agreement, this bill would grandfather existing redevelopment activities to the extent such activities are matured. Thus, if an area has already been designated as a redevelopment area under existing law, or a redevelopment plan has already been adopted, or a redevelopment agreement has already been authorized and executed, these actions would remain valid and given full force and effect. Future actions

occurring after the effective date of this bill, however, would be governed by its provisions.

Committee Amendments

The committee amended the title of the bill to indicate the inclusion of amendments to various parts of statutory law.

The committee amended section 1 of the bill to clarify the findings and declarations, in order to better reflect the objectives of the bill and the public concerns that it addresses.

The committee amended section 2 of the bill to add a definition of “contamination,” to refine the definition of “detrimental to the safety, health, or welfare of the community” to clarify that for commercial properties, the objective evidence of detriment also may include a lack of proper utilization of the land or structures, resulting in conditions that are stagnant and not fully productive, and to refine the definition of “redevelopment area” to clarify that it must be a contiguous area.

The committee amended section 3 of the bill to provide that no municipality shall exercise the power of eminent domain in an area in need of redevelopment for the acquisition of land subject to the protections provided under section 12 of P.L.1983, c.32 (C.4:1C-19).

The committee amended section 4 of the bill to refine the criteria by which an area may be determined to be in need of redevelopment.

The committee amended section 5 of the bill to:

Clarify that a private entity shall not conduct or fund any part of the investigation to determine whether a proposed area is a redevelopment area;

Clarify that a notice for a public hearing concerning a proposed area in need of development shall state that the governing body is considering designating the area as a redevelopment area, formerly referred to as a “blighted area;”

Require copies of the notice to be sent by both certified and regular mail;

Clarify the procedures governing the presentation of testimony at a hearing;

Provide that if the determination that the delineated area is a redevelopment area is challenged in court, the municipality shall be required to show, by a preponderance of the evidence, that the delineated area fulfills the criteria set forth in section 5 of P.L.1992, c.79 (C.40A:12A-5);

Clarify that the notice of final adoption of an ordinance making a determination the delineated area is a redevelopment area published in the official newspaper of the municipality shall include a statement that any action or proceeding of any kind or nature in any court questioning the validity of the adoption of the ordinance or the determination contained therein, shall be commenced within 60 days after the first publication of such notice; and

Add a subsection specifying that, order to continue an area in need of redevelopment determination, ten years following the adoption of blight determination or ten years following the final adoption of the redevelopment plan, whichever occurs later, not to exceed a period of 15 years following the initial blight determination adoption, the municipality shall continue the blight determination through the adoption of an ordinance affirming that the conditions supporting the determination are still present or that substantial progress has been made on the implementation of the redevelopment plan.

The committee amended section 6 of the bill to specify that displaced residents of housing units provided under any State or federal housing subsidy program or the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) shall have first priority for those replacement units provided in the redevelopment plan.

The committee amended section 7 of the bill to provide that tenants who are otherwise eligible for rental assistance and who are displaced by a redevelopment project undertaken because of the use of eminent domain authorized pursuant to the "Local Redevelopment and Housing Law" shall be entitled to receive rental assistance, on a priority basis, under the State rental assistance program for low income individuals or households. The redeveloper of the project in connection with which eminent domain has been employed shall be responsible for reimbursing the State for the cost of the rental assistance for a period not to exceed four years from the commencement of occupancy of the new unit, and shall, prior to any displacement, deposit with the Commissioner of Community Affairs the amount estimated by the commissioner to be necessary for this purpose.

The committee amended section 12 of the bill to specify that any agreement between a redevelopment entity and a redeveloper shall provide for the use or potential use of eminent domain by the redevelopment entity, and that such agreement shall contain a requirement, on the part of the redeveloper, to notify any property owner who receives a written offer from the redevelopment entity of the total compensation provided for in each contract of sale between the redeveloper and any property owner in the redevelopment area. This notice, which shall be in writing, shall be provided at the time that the written offer is presented by the redevelopment entity.

The committee amended section 13 of the bill to clarify that, from the date of mailing of a notice to residents displaced as a result of a redevelopment project offering the opportunity to purchase or lease a dwelling unit within the redevelopment project, the residents shall have 20 business days before the units in the development are offered to the general public, in order to enter into a contract of purchase or a lease for a unit in the development.

The committee amended section 14 of the bill to specify that, for all areas determined to be in need of redevelopment, a municipality

shall submit to the Department of Community Affairs, with updates as required by the department, an accounting of the cost of all public investments made in the redevelopment area subsequent to the final adoption of an ordinance determining the area as in need of redevelopment, including, but not limited to, the granting of tax abatements, the issuance of density bonuses, and the value of public infrastructure provided in the implementation of the plan.

The committee inserted a new section 15, amending section 6 of P.L.1971, c.361 (C.20:3-6), concerning condemnation.

The committee inserted new sections 16 through 18, amending sections 4 through 6 of P.L.1971, c.362 (C.20:4-4 through 20:4-6), concerning compensation and replacement housing for relocation of displaced persons and businesses. Additionally, the committee inserted a new section 19, providing that all payment amounts set forth in sections 4 through 6 of P.L.1971, c.362 (C.20:4-4 through 20:4-6), as amended by this bill, shall be annually automatically adjusted on the basis of the Consumer Price Index for All Urban Consumers (CPI-U), U. S. City Average, published by the United States Department of Labor, Bureau of Labor Statistics, using the last published index figure as of the date of displacement as the numerator and the index figure for the month in which this bill becomes effective as the denominator.

The committee inserted a new section 20, providing that, in addition to payments otherwise authorized in this bill for the taking of private property through the use of eminent domain, a redevelopment entity shall make an additional payment to the owner of a business for the value of goodwill. For the purposes of this section, "goodwill" means the benefits that accrue to a business as a result of its location, reputation for dependability, skill or quality, and any other circumstances resulting in probable retention of old or acquisition of new patronage.

The committee inserted a new section 21, banning certain contributions by redevelopers and their consultants from the onset of the redevelopment process to the completion of the redevelopment agreement.

Finally, the committee inserted a new section 22, amending section 22 of P.L.1971, c.362 (C.20:4-22) to add references to the New Jersey Transit Corporation to the "Relocation Assistance Act" to reflect current practice and to qualify for federal assistance.

Minority Statement

Assemblywoman HANDLIN

The power of eminent domain is so expansive, and so potentially destructive to lives and livelihoods, that every effort must be made to ensure that the process is conducted in a manner that will give all affected parties confidence in its integrity without a shadow of a doubt.

I cannot vote to create a new procedure that is easily corruptible, and such is the unfortunate case with this bill. The pay-to-play restrictions in the bill are simply inadequate, as they generally mirror the weak and loophole-ridden provisions of the existing law. Further, the bill contains no nepotism restrictions at all, and therefore does nothing to prevent a developer who is an elected official's relative from using access to inside information and favored treatment to obtain a sweetheart deal in a development project involving eminent domain.

When I have raised these objections to the bill in the past, the chairman of this committee has responded that sufficient protection is provided by New Jersey's general pay-to-play regulations. Yet in a separate bill dealing with the issue of eminent domain – that which created the Fort Monmouth Revitalization Authority – this same committee voted unanimously to include a higher pay-to-play standard which was not undermined by the so-called “fair and open process” loophole that exists in current law. It is plainly illogical to say that tougher pay-to-play restrictions are necessary in the Fort Monmouth revitalization effort, but at the same time are not necessary to protect the integrity of eminent domain projects all over the state.

For these reasons, I must oppose the motion to report this bill favorably to the General Assembly.