

SENATE, No. 293

STATE OF NEW JERSEY 214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:

Senator DIANE B. ALLEN

District 7 (Burlington and Camden)

SYNOPSIS

Places temporary moratorium on use of eminent domain; creates Eminent Domain Study Commission to examine its use Statewide.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT imposing a limited moratorium on certain eminent domain
2 actions and establishing a commission to recommend legislation
3 to end abuse of this power.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
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8 1. The Legislature finds and declares that:

9 On June 23, 2005, the United States Supreme Court rendered its
10 decision in *Kelo v. City of New London*, 125 S. Ct. 2655 (2005),
11 which allows the taking of private property by eminent domain for
12 the purpose of economic development, even when the ultimate
13 result of the taking is ownership of the property being vested in
14 another private person;

15 Even though Article VIII, Section III, paragraph 1 of the New
16 Jersey State Constitution declares that the clearance, replanning,
17 development or redevelopment of blighted areas shall be a public
18 purpose and public use, for which private property may be taken or
19 acquired, the *Kelo* decision has focused widespread attention on the
20 inappropriate use of this power;

21 Following upon this decision, the Legislature believes that the
22 interpretation and use of the State's eminent domain law should be
23 reviewed to assure that this power is used in responsible fashion
24 and to identify potential legislative remedies to help avoid abuse;

25 The Legislature is in favor of economic development and its
26 continuation without government officials overstepping their
27 ground;

28 The Legislature supports builders and developers that use smart
29 growth policies;

30 Accordingly, the Legislature determines that in order to protect
31 the general welfare and the rights of citizens and to ensure that
32 private property rights are not violated due to the inappropriate use
33 of the eminent domain power, it is necessary to enact a moratorium
34 on any takings of this nature by any public body until further
35 legislative remedies may be considered.
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37 2. Notwithstanding any provision of law, rule or regulation to
38 the contrary, neither the State, a county, a municipality, or their
39 respective agencies or instrumentality thereof, on or after the
40 effective date of this act for a period of 24 months shall use eminent
41 domain for any purpose other than the direct use of the property by
42 the State, county or municipality, or any agency or instrumentality
43 thereof, as appropriate.
44

45 3. a. There is established the Eminent Domain Study
46 Commission which shall conduct an examination of the use and
47 application of eminent domain in the State.

48 b. The Study Commission shall be comprised of eleven

1 members as follows:

2 (1) Two members shall be appointed by the President of the
3 Senate, one of whom shall represent the New Jersey Builders
4 Association and one of whom shall be a public member with
5 significant expertise in economic development; two members shall
6 be appointed by the Speaker of the General Assembly, one of whom
7 shall represent the New Jersey League of Municipalities and one of
8 whom shall be a public member who is Hispanic; two members
9 shall be appointed by the Minority Leader of the Senate, one of
10 whom shall represent the New Jersey Farm Bureau and one of
11 whom shall represent an organization that represents small
12 business; and two members shall be appointed by the Minority
13 Leader of the Assembly, one of whom shall be a public member
14 who is an African American and one of whom shall represent an
15 environmental organization. The two members appointed by each
16 presiding officer and minority leader shall not be of the same
17 political party.

18 (2) The Attorney General, Commissioner of Community Affairs
19 and Commissioner of Transportation shall all serve ex officio.

20 c. The chairman of the Study Commission shall be elected by
21 the commission from among its members.

22 d. Action may be taken by the Study Commission at any
23 meeting thereof by the affirmative vote of a majority of the full
24 membership of the commission.

25 e. Members of the Study Commission shall not receive any
26 compensation, but they shall be reimbursed for expenses incurred in
27 the performance of their duties.

28 f. The Study Commission may call to its assistance any
29 employees as are necessary and made available to it from any
30 agency or department of the State or its political subdivisions.

31 g. The Study Commission shall meet regularly as it may
32 determine, and shall also meet at the call of the chairperson of the
33 board. Meetings of the Study Commission are subject to the "Open
34 Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.).

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36 4. The Eminent Domain Study Commission shall, within 12
37 months of the appointment of the last member, issue a final report
38 to the Governor, and to every member of the Senate and the General
39 Assembly on the use of eminent domain in the State, with
40 recommendations for any amendments to existing law to assure its
41 responsible use by governmental entities.

42 The Study Commission shall study the use and procedure of
43 eminent domain and its impact on the State, and particularly the
44 overall impact of State laws governing the use and procedure of
45 eminent domain on economic development, residents and local
46 governments in New Jersey. The Study Commission shall hold at
47 least three public hearings with a hearing in each of the northern,
48 central, and southern geographic areas of the State to elicit public

1 testimony on the use of eminent domain. Notice of these hearings
2 shall be published at least 30 days in advance thereof in at least
3 two newspapers circulating in the specific geographic area where
4 the hearing will be held.

5 Upon the submission of the report, the Study Commission shall
6 cease to exist.

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8 5. This act shall take effect immediately.

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STATEMENT

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13 This bill would place a 24-month moratorium on the exercise of
14 certain eminent domain power by municipalities, or other public
15 entities that exercise this power under delegation by municipalities.
16 The moratorium would apply to the use of eminent domain for any
17 purpose other than the direct use of the subject property by a
18 government entity. One of the effects of this bill would be to place
19 a moratorium on the use of eminent domain to take private property
20 when the primary purpose for the taking is economic development
21 that will ultimately result in ownership of that property being vested
22 in another private person.

23 In addition, the bill would establish the Eminent Domain Study
24 Commission, which shall conduct an examination of the use,
25 procedure and application of eminent domain in the State. The
26 Study Commission shall be comprised of eleven members: two
27 members each, of different political parties, to be appointed by the
28 presiding and minority officers of the Senate and General
29 Assembly; and the Attorney General, Commissioner of Community
30 Affairs, and Commissioner of Transportation, who shall serve ex
31 officio.

32 The Study Commission's central purpose is to study the use and
33 procedure of eminent domain in the State and recommend
34 legislation to discourage the abuse of this significant power. Upon
35 the issuance of this report by the Study Commission 12 months
36 after the appointment of the last member, the Study Commission
37 shall cease to exist.