

# SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

## STATEMENT TO

### **SENATE, No. 1451**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: OCTOBER 7, 2010

The Senate Community and Urban Affairs Committee reports favorably and with committee amendments Senate Bill No. 1451.

The bill, as amended by the committee, would amend the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et al.), the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.), and the "Relocation Assistance Act," P.L.1971, c. 362 (C.20:4-1 et seq.). The amended bill seeks to balance concerns articulated by competing interest groups in order to:

- preserve the ability of municipalities to redevelop blighted areas;
- enhance the notice and hearing requirements afforded property owners and tenants under current law; and
- ensure just compensation and appropriate relocation benefits for property owners and tenants impacted by eminent domain and redevelopment projects.

Sections 1 and 2 of the bill would amend the "Eminent Domain Act of 1971" (EDA) to enhance the exchange of information between prospective condemnors and condemnees during the negotiations that must take place before a condemnor may take private property for a public purpose. Changes to these sections will apply to all condemnation proceedings under State law, not just those for redevelopment purposes. As amended, the bill would:

- require a condemnor to provide a prospective condemnee with a copy of the appraisal being used to determine the amount that the condemnor is offering to purchase the property;
- allow a condemnee to provide information to and raise issues with the condemnor's appraiser;
- require the appraiser to consider the condemnee's information and issues when estimating the fair market value of the property;
- require the appraiser to transmit the condemnee's information and issues, in writing, to the condemnor;
- require the appraisal to reflect value attributable to the location of the property;
- provide condemnees a 45-day period to review the offer (extendable up to 70 days total) with rights to:
  - request more information from the condemnor,

- meet with a representative of the condemnor, and
- obtain their own appraisals.

Sections 3 through 9 of the bill would increase benefits under the “Relocation Assistance Act” (RAA) by:

- clarifying that property owners whose properties are acquired (not just condemned) by public entities are entitled to relocation assistance;
- increasing relocation assistance (for the first time since 1971);
- enhancing rental assistance; and
- introducing automatic annual increases to statutory relocation assistance payment amounts to reflect inflation.

Section 10 amends the “Municipal Land Use Law,” P.L.1975, c.291 (C.40:55D-1 et seq.), to authorize, but not require, municipal master plans to contain a redevelopment plan element to identify redevelopment areas, rehabilitation areas and areas that may be designated for redevelopment or rehabilitation in the future in order to help link redevelopment planning with other municipal activities.

Sections 11 through 27 of the bill reform the “Local Redevelopment and Housing Law” (LRHL), allowing municipalities to continue to use eminent domain in order to redevelop blighted areas while establishing greater protections for property owners and others impacted by condemnations for redevelopment purposes. Under the bill as amended, a municipality willing to redevelop a blighted area without using eminent domain would follow procedures similar to those under current law. A municipality intending to use eminent domain in order to redevelop a blighted area would follow a procedure providing those who would be affected by a redevelopment project with enhanced notice and greater opportunity to express their concerns.

Section 11 amends N.J.S.A. 40A:12A-3, the definitional section of the LRHL. In addition to some technical changes, this section provides that no more than 20% of the land mass designated for private ownership of a redevelopment area may be comprised of land that is not blighted. Current law does not cap the amount of non-blighted property a municipality may include in a redevelopment area. Section 11 also modifies the definition of “rehabilitation” to provide that the term includes the demolition of existing structures.

Section 12 (amending N.J.S.A. 40A:12A-4) contains a provision protecting certain farm land from condemnation for redevelopment purposes. This section also clarifies that property acquired for redevelopment purposes must be consistent with environmental restrictions set forth in other laws and property covenants.

Section 13 (amending N.J.S.A. 40A:12A-5) revises the criteria used to determine if an area is blighted. It adopts criteria that are consistent with the meaning of the term “blight” under the State Constitution, according to the New Jersey Supreme Court decision in *Gallenthin Realty Development, Inc. v. Borough of Paulsboro*, 191

*N.J.* 344 (2007). The bill provides that a municipal governing body determination that an area is in need of redevelopment must conclude that:

- the deterioration or stagnation of the delineated area negatively affects surrounding properties because of a statutory blight criterion;
- the condition or conditions of blight are the prevailing characteristics of the delineated area;
- each non-blighted parcel included within the delineated area is necessary for the effective redevelopment of the area and is an integral part of that area; and
- there is objective evidence of a statutory blight criterion within the delineated area.

Several of the blight criteria contained in this section are changed. The amended bill deletes subsection h., the smart growth basis for blight, from the section. The amended bill adds a new basis for a blight determination, being contaminated property that has remained vacant or substantially underutilized for at least two years.

Sections 14 and 15 of the amended bill will allow a municipality two alternate ways to designate redevelopment areas depending upon whether the municipality wants to have the power to utilize eminent domain for redevelopment purposes in the area. Under section 14 (amending N.J.S.A. 40A:12A-6), a *non-condemnation redevelopment area* (in which eminent domain could not be used) could be designated under procedures similar to those contained in current law. Under section 15, a municipality could designate a *condemnation redevelopment area* by following new procedures that provide greater notice and other transparency requirements than those contained under current law in order to ensure that property owners who could end up losing their property are afforded adequate notice of that possibility.

Section 15 codifies the Appellate Division decision in *Harrison Redev. Agency v. DeRose*, 398 *N.J. Super.* 361 (App. Div. 2008) which specified the “constitutionally-essential components” for notice under the LRHL. This section will clearly inform property owners that a condemnation area designation will place their property at risk of being taken for redevelopment purposes and will inform them of the time frame within which they can contest the designation. Additionally, this section affords greater protections than those required under *DeRose*. By requiring municipalities to file notices of blight determinations at county recording offices, potential purchasers of properties located in a condemnation redevelopment area will be made aware that the property is subject to being taken. The amended bill removes the requirement that notice be provided to the Office of the Public Advocate.

Section 16 provides that redevelopment area designations will lapse after a set period of time, dependent upon whether progress is being made toward redeveloping the area. Under this section,

redevelopment area designations will not lapse as long as work is ongoing.

Section 17 amends N.J.S.A. 40A:12A-7 to expand the scope of redevelopment plans to identify the benefits and costs that can be envisioned through the redevelopment of the area. 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. A redevelopment plan would estimate the number of jobs, temporary and permanent, that will be available to low and moderate income residents of the redevelopment area. A redevelopment plan would also need to document consistency with smart growth planning principles.

Section 18 details numerous steps to enhance the transparency of the adoption of redevelopment plans in condemnation redevelopment areas, addressing issues such as notice and hearings and affording both affected residents and the general public the opportunity to inspect proposed redevelopment plans.

Section 19 amends N.J.S.A. 40A:12A-8 to require redevelopment entities to offer relocation assistance to people and businesses in a redevelopment area prior to subjecting them to safety risks. This section would also limit the period of time within which property may be acquired by condemnation under the LRHL to five years from the adoption of the redevelopment plan for a condemnation redevelopment area or five years of an amendment or revision thereto; and

Section 20 provides that the Department of Community Affairs must annually issue a report on the use of redevelopment in New Jersey.

Section 21 ensures that owners whose properties are taken for redevelopment projects are fairly compensated and limits the use of eminent domain for redevelopment purposes. This section:

- specifies that properties acquired for redevelopment must be valued at no less than the replacement value of the property;
- provides that “non-blighted” property included in a condemnation redevelopment area could only be condemned if the condemnor certifies that it has exhausted all avenues to acquire the property, that acquisition of the property cannot be negotiated despite its best efforts, and that the property is necessary to the viability of the redevelopment project; and
- bestows upon every resident and small business operator displaced because of redevelopment, a right of first refusal to purchase or lease property in the redevelopment area post-development.

Sections 22 and 23 amend N.J.S.A 40A:12A-14 and N.J.S.A. 40A:12A-15 by expanding the criteria for areas in need of rehabilitation. These changes will permit certain property to be designated an area in need of rehabilitation if it would be qualified for designation as an area in need of redevelopment under current law, but will no longer qualify for redevelopment area designation under the terms of the bill, as amended.

Section 24 sets forth a process for selecting redevelopers for large redevelopment projects.

Sections 25 and 31 of the bill provide that persons living on fixed incomes who are displaced because of a redevelopment project would be entitled to receive State rental assistance on a priority basis.

Section 26 bans certain contributions by redevelopers from the onset of the redevelopment process to the completion of the redevelopment agreement.

Section 27 provides that if a court finds any mailed notice required under the LRHL to be defective, the court may order all or certain redevelopment activities suspended until the defect is remedied. This section also protects municipalities from challenges based on a failure to properly post notices so long as a municipal employee affirms that notices were duly posted

Section 28 provides the New Jersey Redevelopment Authority with all the powers and authority of the smart growth ombudsman necessary to facilitate and expedite permits in redevelopment areas.

Section 29 protects certain airports from eminent domain.

Section 30 amends N.J.S.A. 40A:20-12 to establish a reporting requirement for financial agreements and tax exemptions granted under the "Long Term Tax Exemption Law."

Section 32, the bill's effective date, "grandfathers in" existing redevelopment activities to the extent they have matured. Final actions taken under current law before the 1st day of the 4th month after the bill is signed, such as designation of a redevelopment area, adoption of a redevelopment plan or execution of a redevelopment agreement, would remain valid and be given full force and effect. Future actions would be subject to the provisions of the bill, as amended by the committee.

The committee amended the bill to remove a reference to the Office of the Public Advocate in section 15 of the bill, as that office was abolished on June 29, 2010.