

CHAPTER 12
FORMERLY
SENATE BILL NO. 7
AS AMENDED BY
SENATE AMENDMENT NOS. 1 & 2

AN ACT TO AMEND TITLES 10 AND 29 OF THE DELAWARE CODE RELATING TO REAL PROPERTY ACQUISITION AND EMINENT DOMAIN.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Chapter 95, Title 29 of the Delaware Code, by adding a new section 9501A to read as follows:

“9501A Acquisition by Eminent Domain.

(a) The policy of the provisions of this chapter pertaining to eminent domain is to ensure that eminent domain is used for a limited, defined public use. Public use does not include the generation of public revenues, increase in tax base, tax revenues, employment or economic health, through private land owners or economic development.

(b) Notwithstanding any other provision of law, neither this State nor any political subdivision thereof nor any other condemning agency, including an agency as defined in § 9501(b), shall use eminent domain other than for a public use, as defined in § 9501A(c) of Title 29.

(c) The term ‘public use’ shall only mean (1) the possession, occupation, or utilization of land by the general public or by public agencies; (2) the use of land for the creation or functioning of public utilities, electric cooperatives, or common carriers, or (3) where the exercise of eminent domain (a)(i) removes a “blighted area” as defined at 31 Del. C. §4501(3), or a “slum area”; as defined at 31 Del. C. §4501(21); (ii) removes a structure that is beyond repair or unfit for human habitation or use; or (iii) is used to acquire abandoned real property and (b) eliminates a direct threat to public health and safety caused by or related to the real property in its current condition.”

(d) Whenever real property is condemned and will be used, including owned, occupied or developed by a private party, the State or agency thereof or a political subdivision must establish by clear and convincing evidence that the use of eminent domain complies with the definition of “public use” in §9501A(c) of Title 29.

(e) No written notice or correspondence shall be sent to property owners from the State, an agency or a political subdivision communicating to the property owner that the real property is subject to eminent domain without the State, an agency, or a political subdivision first notifying the property owner in writing of the public use as defined in §9501A(c) and as required by §9505(15) of Title 29”.

Section 2. Amend section 9505(15), Title 29 of the Delaware Code, by striking the words “as described” and by inserting after the words “recognized public use”, the following:

“, as defined in Section 9501A of Title 29,”

Section 3. Amend section 6105(b), Title 10 of the Delaware Code by inserting after the words “to be taken” and before the “,” the words “consistent with Title 29 §9501A, the compliance with Title 29 §9505(15),”.

Section 4. Amend section 6105, Title 10 of the Delaware Code by adding a new subsection (e) to read as follows:

“(e) In the event that §9501A(d) of Title 29 applies, then the court shall schedule a hearing for the agency to meet its burden to establish a public use as defined in 9501A of Title 29”.

Section 5. Amend Chapter 95, Title 29 of the Delaware Code by creating a new Section 9501B to read as follows:

“§9501B Transportation and Eminent Domain.

The provisions of Section 9501A of this Title shall not apply to the acquisition of property or property rights by the Department of Transportation for any transportation facility, project, or program as defined in Titles 2, 9, 14, 17, and 29 of this code, if the primary purpose of each parcel being required is to maintain or improve the State’s transportation network, as sworn to by the Secretary of the Department or her authorized designee.”

Section 6. Amend Chapter 95, Title 29 of the Delaware Code by creating a new §9501C to read as follows:

“§9501C Natural Resources and Eminent Domain.

The provisions of Section 9501A of this Title shall not apply to the acquisition of property or property rights by the Department of Natural Resources and Environmental Control, any Tax Ditch, and any Tax Lagoon, for any acquisition authorized in Title 7 of this Code, if the primary purpose of such acquisition is to maintain, protect or improve the State’s natural resources, as sworn to by the Secretary of the Department or his or her authorized designee.”

Approved April 09, 2009