

# SENATE, No. 177

## STATE OF NEW JERSEY 211th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2004 SESSION

**Sponsored by:**

**Senator GERALD CARDINALE**

**District 39 (Bergen)**

**Senator HENRY P. MCNAMARA**

**District 40 (Bergen, Essex and Passaic)**

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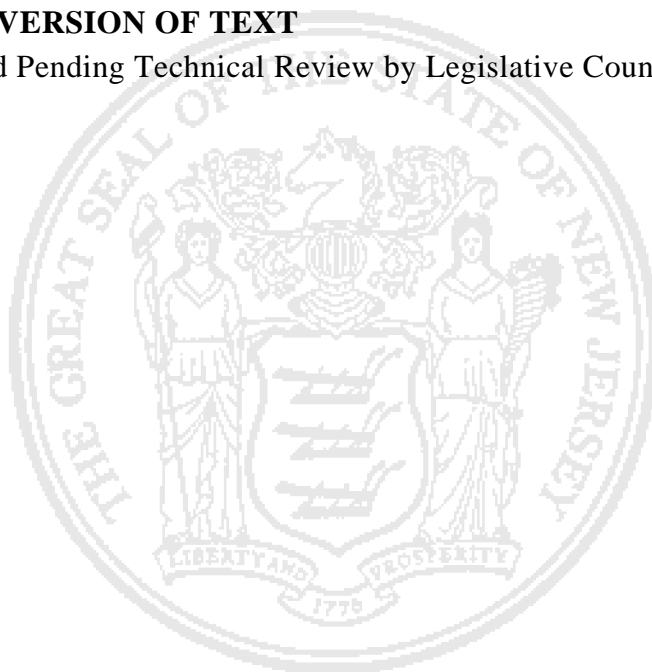
**Senators Bark, Inverso, Palaia and Allen**

**SYNOPSIS**

Specifies bona fide negotiations in eminent domain proceedings and clarifies establishment of compensation for business owners.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning government responsibility and protection of  
2 private property rights in condemnation proceedings, amending and  
3 supplementing P.L.1971, c.361.

4

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

7

8 1. Section 2 of P.L.1971, c.361 (C.20:3-2) is amended to read as  
9 follows:

10 2. Definitions

11 When used in this act, unless the context or subject matter  
12 otherwise requires, the following words shall have the meanings  
13 ascribed to them under this section:

14 (a) "Condemn" means to take private property for a public  
15 purpose under the power of eminent domain;

16 (b) "Condemnor" means the entity, public or private, including the  
17 State of New Jersey, which is condemning private property for a  
18 public purpose under the power of eminent domain;

19 (c) "Condemnee" means the owner of an interest in the private  
20 property being condemned for a public purpose under the power of  
21 eminent domain;

22 (d) "Property" means land, or any interest in land, and (1) any  
23 building, structure or other improvement imbedded or affixed to land,  
24 and any article so affixed or attached to such building, structure or  
25 improvement as to be an essential and integral part thereof, (2) any  
26 article affixed or attached to such property in such manner that it  
27 cannot be removed without material injury to itself or to the property,  
28 (3) any article so designed, constructed, or specially adapted to the  
29 purpose for which such property is used that (a) it is an essential  
30 accessory or part of such property; (b) it is not capable of use  
31 elsewhere; and (c) would lose substantially all its value if removed  
32 from such property. Property shall include any business, as that term  
33 is defined in section 3 of P.L.1971, c.362 (C.20:4-3), that is conducted  
34 upon the parcel to be acquired;

35 (e) "Court" means Superior Court of New Jersey;

36 (f) "Rules" means the applicable rules governing the courts of the  
37 State of New Jersey as promulgated from time to time by the Supreme  
38 Court of New Jersey;

39 (g) "Action" means the legal proceeding in which

40 (1) property is being condemned or required to be condemned;

41 (2) the amount of compensation to be paid for such condemnation  
42 is being fixed;

43 (3) the persons entitled to such compensation and their interests

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 therein are being determined; and

2 (4) all other matters incidental to or arising therefrom are being  
3 adjudicated.

4 (h) "Compensation" means the just compensation which the  
5 condemnor is required to pay and the condemnee is entitled to receive  
6 according to law as the result of the condemnation of property;

7 (i) "Award" means the award of compensation made by the  
8 commissioners provided for herein;

9 (j) "Judgment" means the adjudication by the court of any issue of  
10 fact or law, or both, arising under this act. The adjudication of the  
11 right to condemn shall be a final judgment. All other judgments shall  
12 be interlocutory or final, according to law, or as may be prescribed by  
13 the rules;

14 (k) "Recording office" means the county office of each county in  
15 which the property being condemned, or any part thereof, is located,  
16 in which office conveyances of real property may be recorded;

17 (l) "Days" means calendar days, calculated in accordance with the  
18 rules of court;

19 (m) "Public utility" means and includes every public utility, as the  
20 same are enumerated in Revised Statutes 48:2-13, and every natural  
21 gas pipeline utility as defined in P.L.1952, chapter 166 (C.48:10-2 et  
22 seq.) vested with the power of eminent domain and subject to  
23 regulation under State or Federal law.

24 (n) Words used in the singular shall include the plural and vice  
25 versa. Words used in the neuter gender shall include masculine and  
26 feminine gender, as the case may be.

27 (cf: P.L.1971, c.361, s. 2)

28

29 2. Section 5 of P.L.1971, c.361 (C.20:3-5) is amended to read as  
30 follows:

31 5. a. The court shall have jurisdiction of all matters in  
32 condemnation, and all matters incidental thereto and arising therefrom,  
33 including, but without limiting the generality of the foregoing,  
34 jurisdiction to determine the authority to exercise the power of  
35 eminent domain; to compel the exercise of such power; to fix and  
36 determine the compensation to be paid and the parties entitled thereto,  
37 and to determine title to all property affected by the action.

38 b. When a business is situated on the property all or part of which  
39 is to be acquired, the complaint shall allege and the burden shall be on  
40 the municipality or redevelopment entity to demonstrate by the  
41 preponderance of the evidence that the proposed use of the property  
42 is of such significant public interest as to justify the relocation or  
43 closure of the business at that location. This subsection shall not apply  
44 to acquisitions or condemnation actions brought by the New Jersey  
45 Department of Transportation, whether they are brought on behalf of  
46 that department or by that department as agent on behalf of other

1 public entities for transportation or related purposes, the New Jersey  
2 Transit Corporation, the South Jersey Transportation Authority, the  
3 New Jersey Highway Authority, the New Jersey Turnpike Authority,  
4 or any public transportation authorities or entities that are successors  
5 to those authorities or entities, or on behalf of any other public  
6 transportation agency or authority of this State the principal mission  
7 of which is to provide transportation services or facilities to the public.  
8 (cf: P.L.1971, c.361, s.5)

9  
10 3. Section 6 of P.L.1971, c.361 (C.20:3-6) is amended to read as  
11 follows:

12 6. a. Whenever any condemnor shall have determined to acquire  
13 property pursuant to law, including public property already devoted to  
14 public purpose, but cannot acquire title thereto or possession thereof  
15 by agreement with a prospective condemnee, whether by reason of  
16 disagreement concerning the compensation to be paid or for any other  
17 cause, the condemnation of such property and the compensation to be  
18 paid therefor, and to whom payable, and all matters incidental thereto  
19 and arising therefrom shall be governed, ascertained and paid by and  
20 in the manner provided by this act; provided, however, that no action  
21 to condemn shall be instituted unless the condemnor is unable to  
22 acquire such title or possession through bona fide negotiations with  
23 the prospective condemnee[, which negotiations shall include an offer  
24 in writing by the condemnor to the prospective condemnee holding the  
25 title of record to the property being condemned, setting forth the  
26 property and interest therein to be acquired, the compensation offered  
27 to be paid and a reasonable disclosure of the manner in which the  
28 amount of such offered compensation has been calculated, and such  
29 other matters as may be required by the rules. Prior to such offer the  
30 taking agency shall appraise said property and the owner shall be given  
31 an opportunity to accompany the appraiser during inspection of the  
32 property. Such offer shall be served by certified mail. In no event  
33 shall such offer be less than the taking agency's approved appraisal of  
34 the fair market value of such property].

35 b. For purposes of this act bona fide negotiations between a  
36 condemnor and a prospective condemnee holding title of record shall  
37 comprise the following:

38 (1) The taking agency shall have at least one appraisal prepared  
39 which evaluates the proposed acquisition of the real property and any  
40 improvements located thereon. As part of the appraisal process, the  
41 prospective condemnee holding the title of record shall be given an  
42 opportunity to accompany the appraiser or appraisers during the  
43 inspection of the property.

44 (2) The taking agency shall make a written offer to the prospective  
45 condemnee holding the title of record, by certified mail or personal  
46 service, setting forth the property interest to be acquired and a

1 statement of the full fair market value to be paid. In no event shall the  
2 offer be less than the taking agency's approved appraisal of the fair  
3 market value of the property or improvements situated thereon.

4 (3) The taking agency shall provide the prospective condemnee  
5 holding the title of record with a map and description of the land and  
6 improvements to be acquired.

7 (4) The taking agency shall provide the prospective condemnee  
8 holding the title of record with a copy of the taking agency's approved  
9 appraisal and any specialist report relied upon by the appraiser in  
10 establishing the estimate of fair market value. Any specialist report  
11 shall be provided in advance of the appraisal inspection. The appraisal  
12 shall include a description of the appraisal valuation method or  
13 methods relied upon; a breakdown of the appraised value allocated to  
14 the land, improvements or damages to the owner's remaining lands;  
15 and data concerning comparable sales and leases relied upon in  
16 determining the amount of compensation offered. The sales and lease  
17 data shall include the names of seller and purchaser or landlord and  
18 tenant; location of the property by block, lot, street, street number and  
19 municipality; date of sale or date and duration of lease; the  
20 consideration for the sale or amount of rent; the book and page  
21 number of the recording of the deed; and any unusual factors known  
22 to the condemnor which may affect value.

23 (5) The taking agency shall give the prospective condemnee  
24 holding the title of record the opportunity to consider the offer and to  
25 present material relevant to either the value of the property or the  
26 agency's proposed acquisition. The taking agency shall consider the  
27 position of the prospective condemnee holding the title of record and  
28 shall respond to any relevant material provided.

29 (6) A rejection of said offer or failure to accept the same within the  
30 period fixed in the written offer, which shall in no case be less than 14  
31 days from the mailing or personal service of the offer, shall [be  
32 conclusive proof] create a rebuttable presumption of the inability of  
33 the condemnor to acquire the property or possession thereof through  
34 negotiations and presumes the taking agency has responded to relevant  
35 material submitted by the prospective condemnee holding title of  
36 record.

37 c. When the holder of the title is unknown, resides out of the State,  
38 or for other good cause, the court may dispense with the necessity of  
39 such negotiations. Neither the offer nor the refusal thereof shall be  
40 evidential in the determination of compensation.

41 d. In the event that the property being acquired by a taking agency  
42 includes a private business, the written offer to the record owner of  
43 the real property and to the owner of the business, in addition to  
44 including a breakdown of the amount being offered for the value of the  
45 real estate and damages to the remainder, if any, shall include the value  
46 of the business situated on the property being acquired. In no event

1 shall the taking agency's offer be less than the sum of the taking  
2 agency's approved appraisal of the fair market value of the real  
3 property and improvements being acquired together with any damages  
4 to the remainder, if any, and the approved appraisal of any business  
5 situated on the property being acquired. Furthermore, at the time an  
6 offer is made to the owner of record of the real property, the taking  
7 agency shall include a description of any business situated on the  
8 property being acquired, together with the methodology employed to  
9 ascertain the value of the business situated on the property being  
10 acquired and a copy of the appraisal of such business. Also the owner  
11 of the business shall be given an opportunity to accompany the  
12 appraiser of the business during the inspection thereof and the  
13 opportunity to present material that is relevant to the value of  
14 the business located on the property being acquired to the taking  
15 agency. The taking agency shall consider the position of the business  
16 owner located on the property being acquired and shall respond to any  
17 relevant material being provided with a copy to the owner of record  
18 of the real estate. However, the provisions of this subsection shall not  
19 apply to acquisitions or condemnation actions brought by the New  
20 Jersey Department of Transportation, whether they are brought on  
21 behalf of that department or by that department as agent on behalf of  
22 other public entities for transportation or related purposes; the New  
23 Jersey Transit Corporation; the South Jersey Transportation Authority;  
24 the New Jersey Highway Authority; the New Jersey Turnpike  
25 Authority; or any public transportation authorities or entities that are  
26 successors to those authorities or entities; or on behalf of any other  
27 public transportation agency or authority of this State the principal  
28 mission of which is to provide transportation services or facilities to  
29 the public.

30 (cf: P.L.1971, c.361, s.6)

31

32 4. Section 12 of P.L.1971, c.361 (C.20:3-12) is amended to read  
33 as follows:

34 12. (a) Waiver of appointment of commissioners. By stipulation  
35 filed in the cause, the condemnor and all condemnees may waive the  
36 appointment of commissioners and in such event, the action shall  
37 proceed to trial before the court.

38 (b) Appointment and qualification of commissioners. Upon  
39 determination that the condemnor is authorized to and has duly  
40 exercised its power of eminent domain, the court shall appoint 3  
41 commissioners to determine the compensation to be paid by reason of  
42 the exercise of such power. Such commissioners shall be residents of  
43 the county in which any part of the property being condemned is  
44 located or, in the case of the commissioner who must be an attorney,  
45 be actively engaged in the practice of law in the county. One of such  
46 commissioners shall be an attorney, admitted to practice in this State

1 for at least 10 years, who shall preside at all hearings and rule on all  
2 questions of evidence and procedure, subject to a review by a majority  
3 of the commissioners. The commissioners shall take and subscribe an  
4 oath faithfully and impartially to perform their duties, and to make a  
5 true award to the best of their skills and understanding, which oath  
6 shall be filed with their award. Should a commissioner die, become  
7 disqualified, unable, neglect or refuse to act, the remaining 2  
8 commissioners shall perform the duties of office with the same  
9 authority as if all commissioners were acting. The court may fill any  
10 vacancy in office, and for cause, may vacate any appointment and  
11 appoint a successor in office.

12 (c) Hearings--subpoena. Upon notice of at least 10 days, the  
13 commissioners shall hold hearings at which the parties and their  
14 witnesses may be heard, under oath, administered by any  
15 commissioner. The conduct of the hearings shall be governed by the  
16 rules of evidence except that testimony as to comparable sales shall  
17 be considered an exception to the hearsay rule. The compulsory  
18 attendance of witnesses and production of records thereat may be  
19 compelled by the commissioners. At the request of any party, and at  
20 his expense, a stenographic record of the hearing shall be maintained.  
21 A majority of commissioners shall be in attendance at all hearings.

22 (d) Limited discovery. (1) At least 15 days prior to the hearing the  
23 parties shall exchange a list of comparable sales intended to be  
24 introduced by them setting forth as to each comparable sale the  
25 following information: name of seller and purchaser; location of  
26 property by block, lot and municipality; date of sale; the consideration;  
27 and book and page of recording. No party shall be permitted to offer  
28 testimony of any comparable sale not set forth in said list unless  
29 consented to by all other parties. (2) In the event that a business is  
30 situated on the property subject to the condemnation hearing, the  
31 parties shall exchange their respective methodologies for establishing  
32 the value of the business intended to be introduced by them.  
33 However, the provisions of this paragraph shall not apply to  
34 acquisitions or condemnation actions brought by the New Jersey  
35 Department of Transportation, whether they are brought on behalf of  
36 that department or by that department as agent on behalf of other  
37 public entities for transportation or related purposes; the New Jersey  
38 Transit Corporation; the South Jersey Transportation Authority; the  
39 New Jersey Highway Authority; the New Jersey Turnpike Authority;  
40 or any public transportation authorities or entities that are successors  
41 to those authorities or entities; or on behalf of any other public  
42 transportation agency or authority of this State the principal mission  
43 of which is to provide transportation services or facilities to the public.  
44 (3) There shall be no discovery on the issue of the authority to  
45 condemn except by leave of court.

46 (e) Proof. At the hearing, the condemnor shall proceed first to

1 offer proof of the nature and extent of the taking, and its opinion of  
2 the compensation payable by reason thereof.

3 (f) Inspection of property. Commissioners may inspect the  
4 property being condemned, and shall so inspect when requested by any  
5 party, and in addition, when requested by any party, the commissioners  
6 shall inspect two of the comparable sales testified to by said party.  
7 Such inspection may be in the absence of the parties, unless attendance  
8 at inspection is requested by the parties, or any of them. This right of  
9 inspection shall exist notwithstanding that the structures on the  
10 property may have been demolished and the site altered.

11 (g) Award of commissioners. Within 4 months next following their  
12 appointment, or within any extended period in accordance with the  
13 rules, the commissioners, or a majority of them, shall make and file in  
14 form and content fixed by the rules, an award fixing and determining  
15 the compensation to be paid by the condemnor. The requirements  
16 respecting the time of filing of such award shall be directory and not  
17 mandatory, and a failure to make and file the same within the time  
18 specified, shall not invalidate the award or oust the commissioners of  
19 jurisdiction to complete their duties. Upon its own motion, or on  
20 application of any party, made within 60 days after the filing of the  
21 award, the court may authorize the commissioners to amend,  
22 supplement, modify, or correct their award.

23 (h) Judgment. Any award as to which no appeal is taken in  
24 accordance with the rules, shall become final as of course, and shall  
25 constitute a final judgment. If not paid within 60 days after final  
26 judgment, execution may issue as in other actions at law.

27 (i) Commissioners' fees and expenses. The court, upon application  
28 of any party, including the commissioners, shall fix reasonable fees,  
29 costs and expenses of the commissioners, clerks and other persons  
30 performing any of their duties, all of which shall be paid by the  
31 condemnor.

32 (cf: P.L.1971, c.361, s.12)

33

34 5. Section 25 of P.L.1971, c.361 (C.20:3-25) is amended to read  
35 as follows:

36 25. If within 6 months from the date of appointment of  
37 commissioners, the condemnor fails to file a declaration of taking, the  
38 court, upon application of any condemnee, and on notice to all parties  
39 in interest, may require the condemnor, at its election, to either file a  
40 declaration of taking and make the deposit hereinabove provided, or  
41 abandon the proceedings pursuant to section 35 hereof. For good  
42 cause and upon terms, the court may extend the time for the filing of  
43 such declaration of taking, but not more than 3 months after [the  
44 commencement of the action] expiration of the original 6 months.

45 (cf: P.L.1971, c.361, s.25)

1       6. Section 30 of P.L.1971, c.361 (C.20:3-30) is amended to read  
2 as follows:

3       30. Just compensation shall be determined as of the date of the  
4 earliest of the following events: (a) the date possession of the  
5 property being condemned is taken by the condemnor in whole or in  
6 part; (b) the date of the commencement of the action; (c) the date on  
7 which action is taken by the condemnor which substantially affects the  
8 use and enjoyment of the property by the condemnee; or (d) [the date  
9 of the declaration of blight by the governing body upon a report by a  
10 planning board pursuant to section 38 of P.L.1971, c.361 (C.20:3-38),  
11 or,] in the case of a property being maintained as an abandoned  
12 property for failure to remove the property from the abandoned  
13 property list, as provided pursuant to subsection c. of section 37 of  
14 P.L.1996, c.62 (C.55:19-56), [if there was no declaration of blight, as  
15 of ]the date of expiration of the condemnee's right to appeal inclusion  
16 of the property on the abandoned property list.

17 (cf: P.L.1996, c.62, s.42)

18

19       7. (New section) a. In addition to any other requirement of law,  
20 rule or regulation, whenever a condemnor institutes an action for  
21 condemnation of property pursuant to the "Eminent Domain Act of  
22 1971," P.L.1971, c.361 (C.20:3-1 et seq.), the condemnor shall, no  
23 less than 14 days prior to the commencement of such action, provide  
24 to the condemnee by certified mail and publish in a newspaper of  
25 general circulation in the municipality or county in which the property  
26 is situated, a notice of intent. This notice shall contain a statement of  
27 the reasons for the acquisition and an evaluation of alternatives which  
28 would not include the condemnation action.

29       b. In addition to filing a notice of the pendency of a condemnation  
30 action with the recording office pursuant to section 10 of P.L.1971,  
31 c.361 (C.20:3-10), a condemnor shall publish the notice in a  
32 newspaper of general circulation in the municipality or county in which  
33 the property is situated. The notice shall include the title of the action,  
34 the date of commencement of the action, the docket number, a  
35 description of the property and the interests therein being condemned,  
36 as set forth in the complaint, and the names and addresses of all  
37 condemnees known to the condemnor and the nature of their alleged  
38 interests in the property.

39       c. The provisions of this section shall not apply to acquisitions or  
40 condemnation actions brought by the New Jersey Department of  
41 Transportation, whether they are brought on behalf of that department  
42 or by that department as agent on behalf of other public entities for  
43 transportation or related purposes; the New Jersey Transit  
44 Corporation; the South Jersey Transportation Authority; the New  
45 Jersey Highway Authority; the New Jersey Turnpike Authority; or any  
46 public transportation authorities or entities that are successors to those

1 authorities or entities; or on behalf of any other public transportation  
2 agency or authority of this State the principal mission of which is to  
3 provide transportation services or facilities to the public.

4  
5 8. This act shall take effect immediately.

6  
7  
8 STATEMENT

9  
10 This bill amends the "Eminent Domain Act of 1971," P.L.1971,  
11 c.361 (C.20:3-1 et seq.) with the goal of increasing government  
12 responsibility and accountability in undertaking condemnation actions  
13 and clarifying how active businesses should be treated in condemnation  
14 actions. The term "property," as used in the "Eminent Domain Act of  
15 1971," P.L.1971, c.361 (C.20:3-1 et seq.), is redefined to include  
16 business.

17 Current law requires a condemnor to engage in bona fide  
18 negotiations with a prospective condemnee prior to filing an action to  
19 condemn. This bill defines "bona fide negotiations" as comprising the  
20 preparation of an appraisal of the property to be condemned, the  
21 provision to the condemnee of certain information relevant to the  
22 property acquisition and to the appraisal, the tendering of a written  
23 offer for the property, provision to the condemnee of the methodology  
24 used to establish the value of an active business, if any, situated on the  
25 property subject to the condemnation action, and the opportunity for  
26 response to the offer. A prospective condemnor would be required to  
27 demonstrate by the preponderance of the evidence that the proposed  
28 use of the property is of such significant public interest as to justify the  
29 relocation or closure of the business at that location.

30 Refining the scope of bona fide negotiations will clarify the  
31 responsibilities and rights of the parties under the "Eminent Domain  
32 Act of 1971" and ensure consistency in the implementation of this  
33 aspect of the law. Additionally, the bill places the onus on the  
34 condemnor to justify any condemnation action as to its significance to  
35 the public interest in the event that an active business is to be replaced  
36 or retired as the result of a condemnation action. The bill would  
37 require a taking agency to provide to the condemnee any specialist  
38 report being relied upon by the appraiser in establishing an estimate of  
39 fair market value in advance of the appraisal inspection.

40 Finally the bill provides that its provisions do not apply to  
41 acquisitions or condemnation actions brought by State transportation  
42 agencies.