

ASSEMBLY, No. 457

STATE OF NEW JERSEY 214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:

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SYNOPSIS

Requires "just compensation" for condemnation of single-family residence to be based on cost of comparable relocation properties.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning just compensation for certain residential
2 condemnations and amending P.L.1971, c.361.

3

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

6

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

9 6. Whenever any condemnor shall have determined to acquire
10 property pursuant to law, including public property already devoted
11 to public purpose, but cannot acquire title thereto or possession
12 thereof by agreement with a prospective condemnee, whether by
13 reason of disagreement concerning the compensation to be paid or
14 for any other cause, the condemnation of such property and the
15 compensation to be paid therefor, and to whom payable, and all
16 matters incidental thereto and arising therefrom shall be governed,
17 ascertained and paid by and in the manner provided by this act;
18 provided, however, that no action to condemn shall be instituted
19 unless the condemnor is unable to acquire such title or possession
20 through bona fide negotiations with the prospective condemnee,
21 which negotiations shall include an offer in writing by the
22 condemnor to the prospective condemnee holding the title of record
23 to the property being condemned, setting forth the property and
24 interest therein to be acquired, the compensation offered to be paid
25 and a reasonable disclosure of the manner in which the amount of
26 such offered compensation has been calculated, and such other
27 matters as may be required by the rules. Prior to such offer the
28 taking agency shall appraise said property and the owner shall be
29 given an opportunity to accompany the appraiser during inspection
30 of the property. Such offer shall be served by certified mail. In no
31 event shall such offer be less than the taking agency's approved
32 appraisal of the fair market value of such property. In the case of a
33 single-family residential property, the taking agency's approved
34 appraisal of the fair market value of the property shall be increased
35 in order to reflect the average purchase price of comparable
36 relocation properties. A rejection of said offer or failure to accept
37 the same within the period fixed in written offer, which shall in no
38 case be less than 14 days from the mailing of the offer, shall be
39 conclusive proof of the inability of the condemnor to acquire the
40 property or possession thereof through negotiations. When the
41 holder of the title is unknown, resides out of the State, or for other
42 good cause, the court may dispense with the necessity of such
43 negotiations. Neither the offer nor the refusal thereof shall be
44 evidential in the determination of compensation.

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

Matter underlined thus is new matter.

1 For the purposes of this section, "comparable relocation
2 properties" means single-family residential dwellings located within
3 a 15 mile radius of the property being condemned. Comparable
4 relocation properties shall be characterized by similar lot and house
5 size, similar improvements, similar natural, governmental, cultural,
6 and commercial amenities, and shall be located within school
7 districts having the same or higher Department of Education district
8 factor group designation.

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

10
11 2. Section 12 of P.L.1971, c.361 (C.20:3-12) is amended to read
12 as follows:

13 12. (a) Waiver of appointment of commissioners. By stipulation
14 filed in the cause, the condemnor and all condemnees may waive
15 the appointment of commissioners and in such event, the action
16 shall proceed to trial before the court.

17 (b) Appointment and qualification of commissioners. Upon
18 determination that the condemnor is authorized to and has duly
19 exercised its power of eminent domain, the court shall appoint 3
20 commissioners to determine the compensation to be paid by reason
21 of the exercise of such power. Such commissioners shall be
22 residents of the county in which any part of the property being
23 condemned is located or, in the case of the commissioner who must
24 be an attorney, be actively engaged in the practice of law in the
25 county. One of such commissioners shall be an attorney, admitted
26 to practice in this State for at least 10 years, who shall preside at all
27 hearings and rule on all questions of evidence and procedure,
28 subject to a review by a majority of the commissioners. The
29 commissioners shall take and subscribe an oath faithfully and
30 impartially to perform their duties, and to make a true award to the
31 best of their skills and understanding, which oath shall be filed with
32 their award. Should a commissioner die, become disqualified,
33 unable, neglect or refuse to act, the remaining 2 commissioners
34 shall perform the duties of office with the same authority as if all
35 commissioners were acting. The court may fill any vacancy in
36 office, and for cause, may vacate any appointment and appoint a
37 successor in office.

38 (c) Hearings--subpoena. Upon notice of at least 10 days, the
39 commissioners shall hold hearings at which the parties and their
40 witnesses may be heard, under oath, administered by any
41 commissioner. The conduct of the hearings shall be governed by
42 the rules of evidence except that testimony as to comparable sales
43 shall be considered an exception to the hearsay rule. The
44 compulsory attendance of witnesses and production of records
45 thereat may be compelled by the commissioners. At the request of
46 any party, and at his expense, a stenographic record of the hearing
47 shall be maintained. A majority of commissioners shall be in
48 attendance at all hearings.

1 (d) Limited discovery. At least 15 days prior to the hearing the
2 parties shall exchange a list of comparable sales and, in the case of
3 a single-family residence, a list of comparable relocation properties
4 as defined in section 6 of P.L.1971, c.361 (C.20:3-6), intended to be
5 introduced by them setting forth as to each comparable sale or
6 comparable relocation property the following information: name of
7 seller and purchaser; location of property by block, lot and
8 municipality; date of sale; the consideration; and book and page of
9 recording. No party shall be permitted to offer testimony of any
10 comparable sale or comparable relocation property not set forth in
11 said list unless consented to by all other parties. There shall be no
12 discovery on the issue of the authority to condemn except by leave
13 of court.

14 (e) Proof. At the hearing, the condemnor shall proceed first to
15 offer proof of the nature and extent of the taking, and its opinion of
16 the compensation payable by reason thereof.

17 (f) Inspection of property. Commissioners may inspect the
18 property being condemned, and shall so inspect when requested by
19 any party, and in addition, when requested by any party, the
20 commissioners shall inspect two of the comparable sales or, with
21 respect to the condemnation of a single-family residence,
22 comparable relocation properties, testified to by said party. Such
23 inspection may be in the absence of the parties, unless attendance at
24 inspection is requested by the parties, or any of them. This right of
25 inspection shall exist notwithstanding that the structures on the
26 property may have been demolished and the site altered.

27 (g) Award of commissioners. Within 4 months next following
28 their appointment, or within any extended period in accordance with
29 the rules, the commissioners, or a majority of them, shall make and
30 file in form and content fixed by the rules, an award fixing and
31 determining the compensation to be paid by the condemnor. The
32 requirements respecting the time of filing of such award shall be
33 directory and not mandatory, and a failure to make and file the same
34 within the time specified, shall not invalidate the award or oust the
35 commissioners of jurisdiction to complete their duties. Upon its
36 own motion, or on application of any party, made within 60 days
37 after the filing of the award, the court may authorize the
38 commissioners to amend, supplement, modify, or correct their
39 award.

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

44 (i) Commissioners' fees and expenses. The court, upon
45 application of any party, including the commissioners, shall fix
46 reasonable fees, costs and expenses of the commissioners, clerks
47 and other persons performing any of their duties, all of which shall

1 be paid by the condemnor.
2 (cf: P.L.1971, c.361, s.12)

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4 3. Section 13 of P.L.1971, c.361 (C.20:3-13) is amended to read
5 as follows:

6 13. (a) Parties Any party who has appeared at the hearings of
7 the commissioners, either personally or through an attorney, may
8 appeal from the award of the commissioners. Such appeal shall be
9 taken within the period and in the manner provided by the rules.
10 The necessary parties to the appeal shall be only such parties who
11 have appeared at the commissioners' hearings. Other parties may
12 be admitted by the court pursuant to the rules.

13 (b) Hearing on appeal The hearing on appeal shall be a trial de
14 novo, as in other actions at law, without a jury, unless a jury be
15 demanded. The award of the commissioners shall not be admitted
16 in evidence.

17 (c) Limited discovery A valuation expert who has not testified
18 at the hearing before the commissioners shall not be permitted to
19 testify at the trial de novo, unless, within 15 days before trial the
20 party offering such testimony gives notice to the other parties to the
21 appeal of the name and address of such expert and his opinion of
22 the amount of compensation and information relative to comparable
23 sales and, in the case of a single-family residence, relative to
24 comparable relocation properties as defined in section 6 of
25 P.L.1971, c.361 (C.20:3-6), as required by the rules. The
26 information required by the rules shall be supplied as to all
27 additional comparable sales and, in the case of a single-family
28 residence, all additional comparable relocation properties as defined
29 in section 6 of P.L.1971, c.361 (C.20:3-6), not previously testified
30 to before commissioners.

31 (d) Payment of amount of judgment on appeal; right to
32 possession; lien; other remedies The amount of the judgment on
33 the appeal, or so much thereof as shall not have been paid, shall be
34 paid to the parties entitled thereto or paid into court.

35 If possession shall not have been taken theretofore, the
36 condemnor, upon payment as aforesaid, may notwithstanding any
37 further appeal or other proceedings, take possession of the lands or
38 other property for the purposes for which the same was authorized
39 to be taken.

40 (cf: P.L.1971, c.361, s.13)

41
42 4. This act shall take effect immediately.

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44 STATEMENT

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46 This bill is intended to provide financial justice to owners of
47 single-family residences who receive inadequate compensation
48 when their properties are condemned. The New Jersey Constitution

1 requires condemnors to pay "just compensation" when a private
2 property is taken for a public use. Just compensation is generally
3 based on an appraisal of the fair market value of a property.
4 Usually, the fair market value of a property being condemned is not
5 sufficient for the family, whose lives are being totally disrupted, to
6 purchase a similar property in the same general area. This bill
7 addresses this unfair situation by requiring that the compensation
8 paid be based on the cost of comparable relocation properties within
9 a 15 mile radius of the property being condemned. Comparable
10 relocation properties would be properties of a similar lot and house
11 size, with similar improvements, similar natural, governmental,
12 cultural, and commercial amenities, and located within a school
13 district having the same or a higher Department of Education
14 district factor group designation. Allowing households that are
15 disrupted by condemnation proceedings to relocate within the same
16 area or a similar area without additional financial burdens is the
17 most "just" way of compensating these owners for the public taking
18 of their homes.