Sponsored by:
Senator CHRISTOPHER J. CONNORS
District 9 (Atlantic, Burlington and Ocean)

SYNOPSIS
Prevents use of condemnation to acquire residential and other private property under redevelopment laws.

CURRENT VERSION OF TEXT
Introduced Pending Technical Review by Legislative Counsel
AN ACT concerning the condemnation of certain property and amending and supplementing P.L.1992, c.79.

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

1. Section 3 of P.L.1992, c.79 (C.40A:12A-3) is amended to read as follows:

3. As used in this act:

"Bonds" means any bonds, notes, interim certificates, debentures or other obligations issued by a municipality, county, redevelopment entity, or housing authority pursuant to this act.

"Condemnation" means the taking of private property under the power of eminent domain pursuant to the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.).

"Development" means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

"Governing body" means the body exercising general legislative powers in a county or municipality according to the terms and procedural requirements set forth in the form of government adopted by the county or municipality.

"Housing authority" means a housing authority created or continued pursuant to this act.

"Housing project" means a project, or distinct portion of a project, which is designed and intended to provide decent, safe and sanitary dwellings, apartments or other living accommodations for persons of low and moderate income; such work or undertaking may include buildings, land, equipment, facilities and other real or personal property for necessary, convenient or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, educational, welfare or other purposes. The term "housing project" also may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith.

"Persons of low and moderate income" means persons or families who are, in the case of State assisted projects or programs,}

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.
so defined by the Council on Affordable Housing in the Department of Community Affairs, or in the case of federally assisted projects or programs, defined as of "low and very low income" by the United States Department of Housing and Urban Development.

"Public body" means the State or any county, municipality, school district, authority or other political subdivision of the State.

"Public housing" means any housing for persons of low and moderate income owned by a municipality, county, the State or the federal government, or any agency or instrumentality thereof.

"Publicly assisted housing" means privately owned housing which receives public assistance or subsidy, which may be grants or loans for construction, reconstruction, conservation, or rehabilitation of the housing, or receives operational or maintenance subsidies either directly or through rental subsidies to tenants, from a federal, State or local government agency or instrumentality.

"Real property" means all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise, and indebtedness secured by such liens.

"Redeveloper" means any person, firm, corporation or public body that shall enter into or propose to enter into a contract with a municipality or other redevelopment entity for the redevelopment or rehabilitation of an area in need of redevelopment, or an area in need of rehabilitation, or any part thereof, under the provisions of this act, or for any construction or other work forming part of a redevelopment or rehabilitation project.

"Redevelopment" means clearance, replanning, development and redevelopment; the conservation and rehabilitation of any structure or improvement, the construction and provision for construction of residential, commercial, industrial, public or other structures and the grant or dedication of spaces as may be appropriate or necessary in the interest of the general welfare for streets, parks, playgrounds, or other public purposes, including recreational and other facilities incidental or appurtenant thereto, in accordance with a redevelopment plan.

"Redevelopment agency" means a redevelopment agency created pursuant to subsection a. of section 11 of P.L.1992, c.79 (C.40A:12A-11) or established heretofore pursuant to the "Redevelopment Agencies Law," P.L.1949, c.306 (C.40:55C-1 et seq.), repealed by this act, which has been permitted in accordance with the provisions of this act to continue to exercise its redevelopment functions and powers.

"Redevelopment area" or "area in need of redevelopment" means an area determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and 40A:12A-6) or determined heretofore to be a "blighted area" pursuant to
P.L.1949, c.187 (C.40:55-21.1 et seq.) repealed by this act, both
determinations as made pursuant to the authority of Article VIII,
Section III, paragraph 1 of the Constitution. A redevelopment area
may include lands, buildings, or improvements which of themselves
are not detrimental to the public health, safety or welfare, but the
inclusion of which is found necessary, with or without change in
their condition, for the effective redevelopment of the area of which
they are a part; except that the boundaries of a redevelopment area
shall not be extended to include property that is legally occupied as
residential property and maintained in accordance with applicable
housing code and construction code standards.

"Redevelopment entity" means a municipality or an entity
authorized by the governing body of a municipality pursuant to
subsection c. of section 4 of P.L.1992, c.79 (C.40A:12A-4) to
implement redevelopment plans and carry out redevelopment
projects in an area in need of redevelopment, or in an area in need
of rehabilitation, or in both.

"Redevelopment plan" means a plan adopted by the governing
body of a municipality for the redevelopment or rehabilitation of all
or any part of a redevelopment area, or an area in need of
rehabilitation, which plan shall be sufficiently complete to indicate
its relationship to definite municipal objectives as to appropriate
land uses, public transportation and utilities, recreational and
municipal facilities, and other public improvements; and to indicate
proposed land uses and building requirements in the redevelopment
area or area in need of rehabilitation, or both.

"Redevelopment project" means any work or undertaking
pursuant to a redevelopment plan; such undertaking may include
any buildings, land, including demolition, clearance or removal of
buildings from land, equipment, facilities, or other real or personal
properties which are necessary, convenient, or desirable
appurtenances, such as but not limited to streets, sewers, utilities,
parks, site preparation, landscaping, and administrative, community,
health, recreational, educational, and welfare facilities.

"Rehabilitation" means an undertaking, by means of extensive
repair, reconstruction or renovation of existing structures, with or
without the introduction of new construction or the enlargement of
existing structures, in any area that has been determined to be in
need of rehabilitation or redevelopment, to eliminate substandard
structural or housing conditions and arrest the deterioration of that
area.

"Rehabilitation area" or "area in need of rehabilitation" means
any area determined to be in need of rehabilitation pursuant to

(cf: P.L.1992, c.79, s.3)

2. Section 5 of P.L.1992, c.79 (C.40A:12A-5) is amended to
read as follows:
5. A delineated area may be determined to be in need of redevelopment if, after investigation, notice and hearing as provided in section 6 of P.L.1992, c.79 (C.40A:12A-6), the governing body of the municipality by resolution concludes that within the delineated area any of the following conditions is found:

a. The generality of buildings are substandard, unsafe, unsanitary, dilapidated, or obsolescent, or possess any of such characteristics, or are so lacking in light, air, or space, as to be conducive to unwholesome living or working conditions.

b. The discontinuance of the use of buildings previously used for commercial, manufacturing, or industrial purposes; the abandonment of such buildings; or the same being allowed to fall into so great a state of disrepair as to be untenantable.

c. Land that is owned by the municipality, the county, a local housing authority, redevelopment agency or redevelopment entity, or unimproved vacant land that has remained so for a period of ten years prior to adoption of the resolution, and that by reason of its location, remoteness, lack of means of access to developed sections or portions of the municipality, or topography, or nature of the soil, is not likely to be developed through the instrumentality of private capital.

d. Areas with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community.

e. A [growing lack or total] lack of proper utilization of areas, in some instances, caused by the condition of the title[,] or diverse ownership of the real property therein [or other conditions, resulting in a stagnant or not fully] that prevents the productive [condition] utilization of land which could be potentially useful and valuable for contributing to and serving the public health, safety and welfare.

f. Areas, in excess of five contiguous acres, whereon buildings or improvements have been destroyed, consumed by fire, demolished or altered by the action of storm, fire, cyclone, tornado, earthquake or other casualty in such a way that the aggregate assessed value of the area has been materially depreciated.

g. In any municipality in which an enterprise zone has been designated pursuant to the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303 (C.52:27H-60 et seq.) the execution of the actions prescribed in that act for the adoption by the municipality and approval by the New Jersey Urban Enterprise Zone Authority of the zone development plan for the area of the enterprise zone shall be considered sufficient for the determination that the area is in need of redevelopment pursuant to sections 5 and 6 of P.L.1992,
c.79 (C.40A:12A-5 and 40A:12A-6) for the purpose of granting tax
exemptions within the enterprise zone district pursuant to the
provisions of P.L.1991, c.431 (C.40A:20-1 et seq.) or the adoption
of a tax abatement and exemption ordinance pursuant to the
provisions of P.L.1991, c.441 (C.40A:21-1 et seq.). The
municipality shall not utilize any other redevelopment powers
within the urban enterprise zone unless the municipal governing
body and planning board have also taken the actions and fulfilled
the requirements prescribed in P.L.1992, c.79 (C.40A:12A-1 et al.)
for determining that the area is in need of redevelopment or an area
in need of rehabilitation and the municipal governing body has
adopted a redevelopment plan ordinance including the area of the
enterprise zone.

h. The designation of the delineated area is consistent with
smart growth planning principles adopted pursuant to law or
regulation.
(cf: P.L.2003, c.125, s.3)

3. Section 6 of P.L.1992, c.79 (C.40A:12A-6) is amended to
read as follows:

6. a. No area of a municipality shall be determined a
redevelopment area unless the governing body of the municipality
shall, by [resolution] ordinance, authorize the planning board to
undertake a preliminary investigation to determine whether the
proposed area is a redevelopment area according to the criteria set
forth in section 5 of P.L.1992, c.79 (C.40A:12A-5). Such
determination shall be made after public notice and public hearing
as provided in subsection b. of this section. The governing body of
a municipality shall assign the conduct of the investigation and
hearing to the planning board of the municipality.

b. (1) Before proceeding to a public hearing on the matter, the
planning board shall prepare a map showing the boundaries of the
proposed redevelopment area and the location of the various parcels
of property included therein. There shall be appended to the map a
statement setting forth the basis for the investigation.

(2) The planning board shall specify a date for and give notice
of a hearing for the purpose of hearing persons who are interested in
or would be affected by a determination that the delineated area is a
redevelopment area.

(3) The hearing notice shall set forth the general boundaries of
the area to be investigated and state that a map has been prepared
and can be inspected at the office of the municipal clerk. A copy of
the notice shall be published in a newspaper of general circulation
in the municipality once each week for two consecutive weeks, and
the last publication shall be not less than ten days prior to the date
set for the hearing. A copy of the notice shall be [mailed] sent by
certified mail, at least [ten] 14 days prior to the date set for the
hearing to the last owner, if any, of each parcel of property within the area according to the assessment records of the municipality. A notice shall also be sent by certified mail to all persons at their last known address, if any, whose names are noted on the assessment records as claimants of an interest in any such parcel. The assessor of the municipality shall make a notation upon the records when requested to do so by any person claiming to have an interest in any parcel of property in the municipality. The notice shall be published and mailed by the municipal clerk by certified mail, or by such clerk or official as the planning board shall otherwise designate. Failure to mail any such notice shall not invalidate the investigation or determination thereon.

(4) At the hearing, which may be adjourned from time to time, the planning board shall hear all persons who are interested in or would be affected by a determination that the delineated area is a redevelopment area. All objections to such a determination and evidence in support of those objections, given orally or in writing, shall be received and considered and made part of the public record.

(5) After completing its hearing on this matter, the planning board shall recommend that the delineated area, or any part thereof, be determined, or not be determined, by the municipal governing body to be a redevelopment area. After receiving the recommendation of the planning board, the municipal governing body may adopt a resolution determining that the delineated area, or any part thereof, is a redevelopment area. Upon the adoption of a resolution, the clerk of the municipality shall, forthwith, transmit a copy of the resolution to the Commissioner of Community Affairs for review. If the area in need of redevelopment is not situated in an area in which development or redevelopment is to be encouraged pursuant to any State law or regulation promulgated pursuant thereto, the determination shall not take effect without first receiving the review and the approval of the commissioner. If the commissioner does not issue an approval or disapproval within 30 calendar days of transmittal by the clerk, the determination shall be deemed to be approved. If the area in need of redevelopment is situated in an area in which development or redevelopment is to be encouraged pursuant to any State law or regulation promulgated pursuant thereto, then the determination shall take effect after the clerk has transmitted a copy of the resolution to the commissioner. The determination, if supported by substantial evidence and, if required, approved by the commissioner, shall be binding and conclusive upon all persons affected by the determination. Notice of the determination shall be served, within 10 days after the determination, upon each person who filed a written objection thereto and stated, in or upon the written
submission, an address to which notice of determination may be sent.

(6) [If written objections were filed in connection with the hearing, the municipality shall, for 45 days next following its determination to which the objections were filed, take no further action to acquire any property by condemnation within the redevelopment area.] (Deleted by amendment, P.L. ___, c. ___)

(pending before the Legislature as this bill)

(7) If a person who filed a written objection to a determination by the municipality pursuant to this subsection shall, within 45 days after the adoption by the municipality of the determination to which the person objected, apply to the Superior Court, the court may grant further review of the determination by procedure in lieu of prerogative writ; and in any such action the court may make any incidental order that it deems proper.

c. An area determined to be in need of redevelopment pursuant to this section shall be deemed to be a "blighted area" for the purposes of Article VIII, Section III, paragraph 1 of the Constitution. If an area is determined to be a redevelopment area and a redevelopment plan is adopted for that area in accordance with the provisions of this act, the municipality is authorized to utilize all those powers provided in section 8 of P.L.1992, c.79 (C.40A:12A-8).

(cf: P.L.2003, c.125, s.4)

4. Section 8 of P.L.1992, c.79 (C.40A:12A-8) is amended to read as follows:

8. Upon the adoption of a redevelopment plan pursuant to section 7 of P.L.1992, c.79 (C.40A:12A-7) and the fulfillment of those conditions set forth in section 6 of P.L. ___, c. (___)

(pending before the Legislature as this bill), the municipality or redevelopment entity designated by the governing body may proceed with the clearance, replanning, development and redevelopment of the area designated in that plan. In order to carry out and effectuate the purposes of this act and the terms of the redevelopment plan, the municipality or designated redevelopment entity may:

a. Undertake redevelopment projects, and for this purpose issue bonds in accordance with the provisions of section 29 of P.L.1992, c.79 (C.40A:12A-29).


c. Acquire, by condemnation, any land or building which is necessary for the redevelopment project, pursuant to the provisions of the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.) except as provided below:

(1) land and buildings legally occupied as residential property
and maintained in accordance with applicable housing code and
construction code standards shall not be acquired under this
subsection:
(2) private property within a redevelopment area that is not itself
in need of redevelopment shall not be taken for the use of, or
transfer to, a private entity for economic development purposes
pursuant to this subsection.
d. Clear any area owned or acquired and install, construct or
reconstruct streets, facilities, utilities, and site improvements
essential to the preparation of sites for use in accordance with the
redevelopment plan.
e. Prepare or arrange by contract for the provision of
professional services and the preparation of plans by registered
architects, licensed professional engineers or planners, or other
consultants for the carrying out of redevelopment projects.
f. Arrange or contract with public agencies or redevelopers for
the planning, replanning, construction, or undertaking of any
project or redevelopment work, or any part thereof; negotiate and
collect revenue from a redeveloper to defray the costs of the
redevelopment entity, including where applicable the costs incurred
in conjunction with bonds, notes or other obligations issued by the
redevelopment entity, and to secure payment of such revenue; as
part of any such arrangement or contract, provide for extension of
credit, or making of loans, to redevelopers to finance any project or
redevelopment work, or upon a finding that the project or
redevelopment work would not be undertaken but for the provision
of financial assistance, or would not be undertaken in its intended
scope without the provision of financial assistance, provide as part
of an arrangement or contract for capital grants to redevelopers; and
arrange or contract with public agencies or redevelopers for the
opening, grading or closing of streets, roads, roadways, alleys, or
other places or for the furnishing of facilities or for the acquisition
by such agency of property options or property rights or for the
furnishing of property or services in connection with a
redevelopment area.
g. Lease or convey property or improvements to any other party
pursuant to this section, without public bidding and at such prices
and upon such terms as it deems reasonable, provided that the lease
or conveyance is made in conjunction with a redevelopment plan,
notwithstanding the provisions of any law, rule, or regulation to the
contrary.
h. Enter upon any building or property in any redevelopment
area in order to conduct investigations or make surveys, sounding or
test borings necessary to carry out the purposes of this act.
i. Arrange or contract with a public agency for the relocation,
pursuant to the "Relocation Assistance Law of 1967," P.L.1967,
c.79 (C.52:31B-1 et seq.) and the "Relocation Assistance Act,"
P.L.1971, c.362 (C.20:4-1 et seq.), of residents, industry or
commerce displaced from a redevelopment area.

j. Make, consistent with the redevelopment plan: (1) plans for carrying out a program of voluntary repair and rehabilitation of buildings and improvements; and (2) plans for the enforcement of laws, codes, and regulations relating to the use and occupancy of buildings and improvements, and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements.

k. Request that the planning board recommend and governing body designate particular areas as being in need of redevelopment or rehabilitation in accordance with the provisions of this act and make recommendations for the redevelopment or rehabilitation of such areas.

l. Study the recommendations of the planning board or governing body for redevelopment of the area.

m. Publish and disseminate information concerning any redevelopment area, plan or project.

n. Do all things necessary or convenient to carry out its powers. (cf: P.L.1992, c.79, s.8)

5. Section 14 of P.L.1992, c.79 (C.40A:12A-14) is amended to read as follows:

14. a. A delineated area may be determined to be in need of rehabilitation if the governing body of the municipality determines by [resolution] ordinance that there exist in that area conditions such that (1) a significant portion of structures therein are in a deteriorated or substandard condition and there is a continuing pattern of vacancy, abandonment or underutilization of properties in the area, with a persistent arrearage of property tax payments thereon or (2) more than half of the housing stock in the delineated area is at least 50 years old, or a majority of the water and sewer infrastructure in the delineated area is at least 50 years old and is in need of repair or substantial maintenance; and (3) a program of rehabilitation, as defined in section 3 of P.L.1992, c.79 (C.40A:12A-3), may be expected to prevent further deterioration and promote the overall development of the community. Where warranted by consideration of the overall conditions and requirements of the community, a finding of need for rehabilitation may extend to the entire area of a municipality. Prior to adoption of the [resolution] ordinance, the governing body shall submit it to the municipal planning board for its review. Within 45 days of its receipt of the proposed [resolution] ordinance, the municipal planning board shall submit its recommendations regarding the proposed [resolution] ordinance, including any modifications which it may recommend, to the governing body for its consideration. Thereafter, or after the expiration of the 45 days if the municipal planning board does not submit recommendations, the
governing body may adopt the resolution ordinance, with or without modification. The resolution ordinance shall not become effective without the approval of the commissioner pursuant to section 6 of P.L.1992, c.79 (C.40A:12A-6), if otherwise required pursuant to that section.

b. A delineated area shall be deemed to have been determined to be an area in need of rehabilitation in accordance with the provisions of this act if it has heretofore been determined to be an area in need of rehabilitation pursuant to P.L.1975, c.104 (C.54:4-3.72 et seq.), P.L.1977, c.12 (C.54:4-3.95 et seq.) or P.L.1979, c.233 (C.54:4-3.121 et seq.).

(cf: P.L.2003, c.125, s.5)

6. (New section) a. Prior to undertaking any action to acquire any property by condemnation within an area in need of redevelopment or an area in need of rehabilitation, the redevelopment entity shall make a declaration of public purpose, which shall be by ordinance if the redevelopment entity is a municipality, or by resolution if the redevelopment entity is an entity authorized by the governing body of the municipality pursuant to subsection c. of section 4 of P.L.1992, c.79 (C.40A:12A-4).

b. Regardless of whether the redevelopment entity is the municipality or another entity designated by the municipality, the declaration of public purpose shall occur only upon proper notification having been provided not less than 14 days prior to the first reading of the ordinance or introduction of the resolution, as the case may be. If the municipality is the redevelopment entity, publication shall occur pursuant to R.S.40:49-2. If the municipality has designated another entity as the redevelopment entity, a copy of the intent to adopt a declaration of public purpose shall be published in a newspaper of general circulation in the municipality.

c. In addition to the publication requirements in subsection b. of this section, a copy of the notice shall be sent by certified mail at least 14 days prior to the date set for the hearing to the last owner of each parcel of property subject to the declaration of public purpose according to the assessment records of the municipality. A notice shall also be sent to all persons, at their last known address, whose names are noted on the assessment records as claimants of an interest in any such parcel. The assessor of the municipality shall make a notation upon the records when requested to do so by any person claiming to have an interest in any parcel of property in the municipality.

d. A declaration of public purpose shall set forth, in detail, the public purposes for which the condemnation action is being undertaken by the redevelopment entity.
7. This act shall take effect immediately.

STATEMENT

This bill would tighten the requirements for the use of the power of eminent domain (condemnation) for redevelopment purposes. Specifically, within a redevelopment (blighted) area, the power of eminent domain could not be used to condemn a property that is legally occupied as residential property and maintained in accordance with applicable housing code and construction code standards. This bill would prevent the taking of private property, private homes and other residential units, by condemnation, to accomplish private economic development objectives, such as the construction of non-public office buildings, mega-stores, and shopping centers. In those cases, the acquisition of private property that is not in need of redevelopment would have to be accomplished through a fair market sale.