

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 800 Session of 2023

INTRODUCED BY DUSH, ROTHMAN, HUTCHINSON, MASTRIANO AND CAPPELLETTI, SEPTEMBER 27, 2023

SENATOR DUSH, STATE GOVERNMENT, AS AMENDED, APRIL 30, 2024

AN ACT

1 Amending Title 26 (Eminent Domain) of the Pennsylvania
2 Consolidated Statutes, IN PROCEDURE TO CONDEMN, PROVIDING FOR <--
3 ADVANCED NOTICE TO CONDEMNEE; AND, in just compensation and
4 measure of damages, providing for compensation for loss of
5 goodwill of BUSINESS OR farm operation. <--

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Title 26 of the Pennsylvania Consolidated <--
9 Statutes is amended by adding a section to read:

10 SECTION 1. TITLE 26 OF THE PENNSYLVANIA CONSOLIDATED <--
11 STATUTES IS AMENDED BY ADDING SECTIONS TO READ:

12 § 305.1. ADVANCED NOTICE TO CONDEMNEE.

13 (A) WRITTEN ADVANCED NOTICE.--NO LESS THAN 30 DAYS PRIOR TO
14 THE FILING OF A DECLARATION OF TAKING, THE ACQUIRING AGENCY
15 SHALL GIVE WRITTEN NOTICE TO THE PROPOSED CONDEMNEE, TO ANY
16 MORTGAGEE OF RECORD AND TO ANY LIENHOLDER OF RECORD.

17 (B) SERVICE.--THE ADVANCED NOTICE SHALL BE SERVED IN THE
18 SAME MANNER AS REQUIRED FOR THE NOTICE UNDER SECTION 305(B)
19 (RELATING TO NOTICE TO CONDEMNEE).

1 (C) CONTENTS.--THE ADVANCED NOTICE SHALL INCLUDE:

2 (1) A STATEMENT THAT THE ACQUIRING AGENCY INTENDS TO
3 FILE A DECLARATION OF TAKING FOR THE ACQUISITION OF THE
4 PROPOSED CONDEMNEE'S PROPERTY NO LESS THAN 30 DAYS FROM THE
5 DATE OF THE ADVANCED NOTICE.

6 (2) THE NAME, ADDRESS AND CONTACT INFORMATION, INCLUDING
7 A TELEPHONE NUMBER AND EMAIL ADDRESS, AT WHICH A
8 REPRESENTATIVE OF THE ACQUIRING AGENCY CAN BE REACHED.

9 (3) THE NAME OF THE PROPOSED CONDEMNEE TO WHOM THE
10 PROPOSED CONDEMNATION IS DIRECTED.

11 (4) A STATEMENT THAT THE PROPOSED CONDEMNEE'S PROPERTY
12 OR PORTION THEREOF MAY BE CONDEMNED FOR PURPOSES OF THE
13 ACQUIRING AGENCY'S PROJECT.

14 (5) A BRIEF DESCRIPTION OF THE PURPOSE OF THE PROPOSED
15 CONDEMNATION, INCLUDING THE ACQUIRING AGENCY'S PROPOSED
16 PROJECT.

17 (6) A BRIEF EXPLANATION OF THE CONDEMNATION PROCESS IN
18 THIS COMMONWEALTH, INCLUDING, BUT NOT LIMITED TO, ALL OF THE
19 FOLLOWING:

20 (I) A STATEMENT OF WHAT EMINENT DOMAIN IS;

21 (II) THE RIGHTS OF A CONDEMNEE UNDER LAW, INCLUDING
22 THE RIGHT TO HIRE A LAWYER TO HELP GUIDE THE CONDEMNEE
23 THROUGH THE CONDEMNATION PROCESS;

24 (III) HOW JUST COMPENSATION IS DETERMINED AND MADE
25 OR SECURED UNDER LAW;

26 (IV) THE STEPS THE ACQUIRING AGENCY WILL TAKE NEXT
27 IF THE PROPOSED CONDEMNEE'S PROPERTY IS SUBJECT TO A
28 DECLARATION OF TAKING; AND

29 (V) THE PROCESS BY WHICH THE PROPOSED CONDEMNEE MAY
30 CHALLENGE THE POWER OR THE RIGHT OF THE ACQUIRING AGENCY

1 TO APPROPRIATE THE CONDEMNED PROPERTY, THE SUFFICIENCY OF
2 THE SECURITY, THE PROCEDURE FOLLOWED BY THE ACQUIRING
3 AGENCY OR THE DECLARATION OF TAKING.

4 (D) PROOF OF SERVICE AND COMPLIANCE.--FILING OF A COPY OF
5 THE ADVANCED NOTICE AND PROOF OF SERVICE THEREOF, TOGETHER WITH
6 THE FILING OF THE DECLARATION OF TAKING AND SECURITY AS REQUIRED
7 UNDER SECTIONS 302 (RELATING TO DECLARATION OF TAKING) AND 303
8 (RELATING TO SECURITY REQUIRED), SHALL CONSTITUTE COMPLIANCE
9 WITH THE NOTICE REQUIREMENTS OF THIS SECTION.

10 (E) PUBLISH ADVANCED NOTICE.--WITHIN 24 HOURS OF ISSUING ITS
11 FIRST ADVANCED NOTICE TO PROPOSED CONDEMNEDS UNDER SUBSECTION
12 (A), AN ACQUIRING AGENCY SHALL POST ADVANCED NOTICE ON ITS
13 PUBLICLY ACCESSIBLE INTERNET WEBSITE, IF AVAILABLE, AND AT ITS
14 PRINCIPAL OFFICE LOCATION, THAT INCLUDES, AT A MINIMUM, THE
15 NOTICES DESCRIBED UNDER SUBSECTION (C) (2), (4), (5) AND (6).

16 § 717. Compensation for loss of goodwill of BUSINESS OR farm <--
17 operation.

18 (a) General rule.--The owner of a BUSINESS OR farm operation <--
19 conducted on the property taken UNDER THIS TITLE or, if the <--
20 property is part of a larger parcel, on the remainder shall be
21 compensated for loss of goodwill if the owner proves all of the
22 following:

23 (1) The loss is caused by the taking of the property or
24 the injury to the remainder.

25 (2) Compensation for the loss will not be duplicated in
26 the compensation otherwise awarded to the owner.

27 (b) Rebuttal of compensation.--The acquiring agency may
28 rebut the compensation provided in subsection (a) if the
29 acquiring agency proves that the loss could have reasonably been
30 prevented by a relocation of the BUSINESS OR farm operation or <--

1 by taking steps and adopting procedures that a reasonably
2 prudent person would take and adopt in preserving the goodwill.

3 (c) Leaseback agreement.--If the acquiring agency and the
4 owner OF A BUSINESS OR FARM OPERATION enter into a leaseback <--
5 agreement, the following shall apply:

6 (1) No additional goodwill shall accrue during the
7 lease.

8 (2) The entering of a leaseback agreement shall not be a
9 factor in determining goodwill, and any liability for
10 goodwill shall be established and paid at the time of
11 acquisition of the property by eminent domain or subsequent
12 to notice that the property may be taken by eminent domain.

13 (d) Use of State tax returns.--

14 (1) If the owner of a BUSINESS OR farm operation and the <--
15 acquiring agency do not agree on the value of goodwill, the
16 owner shall make available to the board of viewers or court,
17 and the board of viewers or court shall, upon terms and
18 conditions that will preserve confidentiality, make available
19 to the acquiring agency the State tax returns of the BUSINESS <--
20 OR farm operation. The acquiring agency shall review the
21 State tax returns solely for the purpose of determining the
22 amount of compensation under this section.

23 (2) Nothing in this section shall be construed to affect
24 any right a party may otherwise have to discovery or to
25 require the production of documents, papers, books and
26 accounts.

27 (e) Definition.--As used in this section, the term
28 "goodwill" means the benefits that accrue to a BUSINESS OR farm <--
29 operation as a result of its location, cultural heritage value
30 to the community, reputation for dependability, skill or quality

1 and any other circumstance resulting in probable retention of
2 old or acquisition of new patronage.

3 Section 2. ~~This act~~ THE ADDITION OF 26 PA.C.S. § 717 shall <--
4 apply retroactively to a declaration of taking filed on or after
5 January 1, 2022.

6 Section 3. This act shall take effect immediately.