

2010 -- H 7217

LC00774

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO TOWNS AND CITIES - EMINENT DOMAIN PROCEEDINGS

Introduced By: Representative Stephen R. Ucci

Date Introduced: January 26, 2010

Referred To: House Municipal Government

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 45-50-13 of the General Laws in Chapter 45-50 entitled "Municipal  
2 Public Buildings Authorities" is hereby amended to read as follows:

3 **45-50-13. Eminent domain proceedings.** -- (a) The authority has the right to acquire any  
4 land, or any interest in it, including development rights, by the exercise of the power of eminent  
5 domain, whenever it is determined by the authority that the acquisition of the land, or interest, is  
6 necessary for the construction or the operation of any project.

7 (1) (i) The power of eminent domain shall be exercised only within the boundaries of the  
8 city or town whose council established the authority, except that any authority in existence on the  
9 effective date of this chapter shall have the power to acquire, by exercise of eminent domain, only  
10 the development rights, except as stated in subsection (a) (5), in the land described in the tax  
11 assessor's plats for the towns of Foster, Scituate, Johnston, and Glocester, as of February 14,  
12 1989, for the purpose of protecting the water supply as follows:

13 (ii) That certain land situated in the town of Foster delineated as Foster tax assessor's lot  
14 47, plat 15 consisting of 32 acres, more or less; that certain land situated in the town of Scituate  
15 delineated as Scituate tax assessor's lot 147, plat 17 consisting of 5.6 acres, more or less; that  
16 certain land situated in the town of Scituate described as Scituate tax assessor's lot 60, plat 20  
17 consisting of 5.8 acres, more or less; that certain land situated in the town of Scituate delineated  
18 as Scituate tax assessor's lot 5, plat 42 consisting of 12 acres, more or less; that certain land  
19 situated in the town of Johnston delineated as Johnston tax assessor's lot 5, plat 57 consisting of

1 3.9 acres, more or less; that certain land situated in the town of Johnston delineated as Johnston  
2 tax assessor's lot 58, plat 57 consisting of .7 acres, more or less; that certain land situated in the  
3 town of Johnston delineated as Johnston tax assessor's lot 6, plat 57 consisting of .4 acres, more  
4 or less; that certain land situated in the town of Johnston delineated as Johnston tax assessor's lot  
5 7, plat 57 consisting of .4 acres, more or less; that certain land situated in the town of Foster  
6 delineated as Foster tax assessor's lot 52, plat 15 consisting of 80 acres, more or less; that certain  
7 land situated in the town of Foster delineated as Foster tax assessor's lot 41A, plat 12 consisting  
8 of 9.8 acres, more or less; ~~that certain land situated in the town of Scituate delineated as Scituate~~  
9 ~~tax assessor's lot 1, plat 38 consisting of 67 acres, more or less;~~ that certain land situated in the  
10 town of Scituate delineated as Scituate tax assessor's lot 4, plat 42 consisting of 10.7 acres, more  
11 or less; that certain land situated in the town of Scituate delineated as Scituate tax assessor's lot  
12 251, plat 49 consisting of 129 acres, more or less; that certain land situated in the town of Scituate  
13 delineated as Scituate tax assessor's lot 3, plat 47 consisting of 29.6 acres, more or less; that  
14 certain land situated in the town of Scituate delineated as Scituate tax assessor's lot 41, plat 41  
15 consisting of 140 acres, more or less; that certain land situated in the town of Johnston delineated  
16 as Johnston tax assessor's lot 17, plat 57 consisting of 45 acres, more or less; that certain land  
17 situated in the town of Johnston delineated as Johnston tax assessor's lot 20, plat 59 consisting of  
18 55 acres, more or less; that certain land situated in the town of Scituate delineated as Scituate tax  
19 assessor's lot 15, plat 47 consisting of 9 acres, more or less; that certain land situated in the town  
20 of Gloucester delineated as Gloucester tax assessor's lot 164, plat 18 consisting of 211.7 acres, more  
21 or less; that certain land situated in the town of Foster delineated as Foster tax assessor's lot 31,  
22 plat 21 consisting of 22 acres, more or less; that certain land situated in the town of Scituate  
23 delineated as Scituate tax assessor's lot 14, plat 37 consisting of 15 acres, more or less; that  
24 certain land situated in the town of Foster delineated as Foster tax assessor's lot 49, plat 15  
25 consisting of 4.5 acres, more or less; that certain land situated in the town of Scituate delineated  
26 as Scituate tax assessor's lot 35, plat 14 consisting of 57 acres, more or less; that certain land  
27 situated in the town of Scituate delineated as Scituate tax assessor's lot 1, plat 37 consisting of 16  
28 acres, more or less; that certain land situated in the town of Scituate delineated as Scituate tax  
29 assessor's lot 5, plat 11 consisting of 33.8 acres, more or less; that certain land situated in the  
30 town of Foster delineated as Foster tax assessor's lot 34A, plat 9 consisting of 20 acres, more or  
31 less; that certain land situated in the town of Scituate delineated as Scituate tax assessor's lot 47,  
32 plat 51 consisting of 10 acres, more or less; that certain land situated in the town of Foster  
33 delineated as Foster tax assessor's lot 42, plat 12 consisting of .3 acres, more or less; that certain  
34 land situated in the town of Scituate delineated as Scituate tax assessor's lot 82, plat 49 consisting

1 of 10 acres, more or less; that certain land situated in the town of Foster delineated as Foster tax  
2 assessor's lot 41, plat 12 consisting of 8 acres, more or less; that certain land situated in the town  
3 of Scituate delineated as Scituate tax assessor's lot 16, plat 37 consisting of 10 acres more or less;  
4 that certain land situated in the town of Scituate delineated as Scituate tax assessor's lot 83, plat  
5 49 consisting of 20 acres, more or less; that certain land situated in the town of Scituate  
6 delineated as Scituate tax assessor's lot 46, plat 9 consisting of 40 acres, more or less; that certain  
7 land situated in the town of Gloucester delineated as Gloucester tax assessor's lot 162, plat 18  
8 consisting of 50.6 acres, more or less; that certain land situated in the town of Scituate delineated  
9 as Scituate tax assessor's lot 15, plat 37 consisting of 15 acres, more or less; that certain land  
10 situated in the town of Scituate delineated as Scituate tax assessor's lot 29, plat 52 consisting of .2  
11 acres, more or less; that certain land situated in the town of Scituate delineated as Scituate tax  
12 assessor's lot 37, plat 17 consisting of 29 acres, more or less; that certain land situated in the town  
13 of Scituate delineated as Scituate tax assessor's lot 11, plat 38 consisting of 17 acres, more or less;  
14 that certain land situated in the town of Foster delineated as Foster tax assessor's lot 42A, plat 12  
15 consisting of .4 acres, more or less; that certain land situated in the town of Scituate delineated as  
16 Scituate tax assessor's lot 53, plat 20 consisting of 9 acres, more or less; that certain land situated  
17 in the town of Scituate delineated as Scituate tax assessor's lot 30, plat 52 consisting of .2 acres,  
18 more or less; that certain land situated in the town of Scituate delineated as Scituate tax assessor's  
19 lot 81, plat 49 consisting of 73 acres, more or less; that certain land situated in the town of Foster  
20 delineated as Foster tax assessor's lot 48A, plat 15 consisting of 15.5 acres, more or less; and that  
21 certain land situated in the town of Foster delineated as Foster tax assessor's lot 48, plat 15  
22 consisting of 28.9 acres, more or less, for the purpose of protecting the public water supply.

23 (2) In addition to the powers previously granted, any authority in existence on July 7,  
24 1989 has the power to acquire by exercise of eminent domain the land, or any interest in it,  
25 described as that certain land situated in the town of Scituate delineated as Scituate tax assessor's  
26 lots 45, 48, 49, 60, 61, 62, and 63, plat 51 consisting of 542.11 acres, more or less, and commonly  
27 known as the "Joslin Farm" for the purpose of protecting the water supply.

28 (3) Notwithstanding the preceding, in the event that the authority ceases to use any land  
29 or development rights acquired by exercise of eminent domain, pursuant to subsections (a) (1) or  
30 (a) (2), for the purpose of protecting the public water supply, the authority shall notify by certified  
31 mail return receipt requested, the original owner of the parcel or his or her lawful heirs, and the  
32 original owner or his or her lawful heirs shall have a right to recover the land or development  
33 rights. The land or development rights shall revert to the original owner or his or her heirs upon  
34 the payment of an amount equal to the price originally paid to the owner plus simple interest at

1 the rate of six percent (6%) per annum (or any other purchase price that is mutually agreed upon  
2 between the parties) of the property or the development rights. Any transfer of the land or  
3 development rights to the city whose city council established a need for an authority or any  
4 department, commission, board, or agency of the city shall not constitute a cessation of the use of  
5 the land or development rights for purposes of protecting the water supply.

6 (4) (i) For the purposes of this section, the term "development rights" means the rights  
7 to:

8 (A) Prohibit the ability of the fee owner to act on or with respect to or regarding uses of a  
9 land or water area; or

10 (B) Require the performance by the fee owner of acts on or with respect to or regarding  
11 uses of a land or water area, which prohibition or requirement retains or maintains the land or  
12 water area in its natural condition or any other condition that is consistent with the protection of  
13 environmental quality or provides the public with the benefit of the unique features of the land or  
14 water area, provided, that development rights will not be construed to deprive the original owner,  
15 his or her successors or assigns, of the right to continue to use the land for agricultural purposes  
16 so long as that use conforms to acceptable agricultural practices as established by the department  
17 of the environment and/or the United States soil conservation service.

18 (ii) "Development rights" may also have any meaning as may be mutually agreed upon  
19 by the fee owner and the authority in any contract, agreement, deed to development rights, or  
20 proceeding before the authority. The proceeding shall be initiated by a fee owner's filing a  
21 petition before the authority and/or any lessee or successor agency seeking permission to use the  
22 land or water area for development. The authority has sixty (60) days to determine if the activity  
23 described in the petition endangers the environmental quality of the land or water area. Upon a  
24 finding of no danger to the environmental quality of the land or water area, the authority shall  
25 grant the petition; provided, if no finding is made within sixty (60) days the petition is deemed  
26 approved.

27 (5) In the event the authority has initiated condemnation proceedings for development  
28 rights, the original affected owner may notify the authority and the superior court of his or her  
29 request that the authority take a fee simple interest in the land. Upon notification, the authority  
30 has the power to acquire the land in fee simple by the exercise of the power of eminent domain  
31 and shall exercise power to acquire a fee simple interest in the land.

32 (6) (i) Prior to the authority's taking the actions described in subsections (b) through (h),  
33 for the purposes of this section, fair market value of the property or development rights are  
34 determined as follows:

1 (ii) Each party (the authority and the landowner) shall appoint one appraiser (who shall  
2 be a qualified member of the American institute of real estate appraisers, the society of real estate  
3 appraisers, the American society of farm managers and rural appraisers, the international  
4 association of assessing officers, the national society of real estate appraisers, the national society  
5 of independent fee appraisers, the American society of appraisers or the international right of way  
6 association, or any successor organization). Each appraiser shall, within twenty (20) business  
7 days of his or her appointment, arrive at an independent determination of the fair market value of  
8 the property. If the difference between the two (2) appraisals as so determined does not exceed  
9 ten percent (10%) of the lesser of the two (2) appraisals, then the fair market value is deemed to  
10 be an amount equal to fifty percent (50%) of the sum of the two (2) appraisals. If the difference  
11 between the appraisals exceeds ten percent (10%) of the lesser appraisal, then the two (2)  
12 appraisers have ten (10) calendar days within which to appoint a third appraiser, who shall, within  
13 twenty (20) calendar days, make his or her own independent determination of the fair market  
14 value of the property. All three (3) appraisals shall then be compared and the appraisal which  
15 differs most in dollar amount from the other two (2) appraisals shall be excluded from  
16 consideration, and the fair market value of the property shall be deemed to be fifty percent (50%)  
17 of the sum of the remaining two (2) appraisals. The authority shall make an offer to purchase the  
18 property or rights in property based upon the fair market value, which offer shall remain open for  
19 thirty (30) days or until the time the offer is accepted or rejected. If the offer of the authority is  
20 rejected, the authority may proceed with condemnation proceedings within ten (10) days.

21 (b) The necessity for acquisition is conclusively presumed upon the adoption by the  
22 authority of a resolution declaring that the acquisition of the land, or interest in it, described in the  
23 resolution is necessary for the construction or operation of any project. Within six (6) months of  
24 the adoption of a resolution, the authority shall cause to be filed, in the land evidence records of  
25 the city or town in which the land is located, a copy of the resolution of the authority, together  
26 with a plat of the land, or interest in it described, and a statement, signed by the chairperson of the  
27 authority, that the land, or interest in it, is taken pursuant to the provisions of this chapter.  
28 Thereupon, the authority shall file, in the superior court in and for the county in which the land,  
29 or interest in it, lies, a statement of the sum of money estimated by the authority to be just  
30 compensation for the land taken.

31 (c) Upon the filing of the copy of the resolution, plat, and statement in the land evidence  
32 records of the city or town, the filing, in the superior court, of the statement, and the depositing in  
33 the superior court, to the use of the person entitled to it, of a sum that the court determines to be  
34 amply sufficient to satisfy the claims of all persons interested in the land (and the court may, in its

1 discretion, take evidence on the questions to determine the sum to be deposited), title to the land,  
2 or interest in it, vests in the authority in fee simple absolute, and the authority may take  
3 possession of the land, or interest in it.

4 (d) No sum paid into the court shall be charged with clerk's fees of any nature. After the  
5 filing of the copy, plat, and statement, notice of the taking of the land, or interest in it, shall be  
6 served upon the owners of, and persons having an estate in and interested in the land, by the  
7 sheriff or the sheriff 's deputies of the county in which the land, or interest in it, lies, leaving a  
8 true and attested copy of the description and statement with each of the persons personally, or at  
9 their last and usual place of abode in this state with some person living there, and in case any of  
10 the persons are absent from this state and have no last and usual place of abode in this state  
11 occupied by any person, the copy shall be left with the persons, if any, in charge of or having  
12 possession of the land, or interest in it, taken of the absent persons if the persons are known to the  
13 officer; and after the filing of the resolution, plat, and statement, the secretary of the authority  
14 shall cause a copy of the resolution and statement to be published in some newspaper published  
15 or having general circulation in the county where the land, or interest in it, may be located, at  
16 least once a week for three (3) successive weeks. If any person agrees with the authority for the  
17 price of land, or interest in it taken, the court, upon the application of the parties in interest, may  
18 order that the sum agreed upon be paid immediately from the money deposited, as the just  
19 compensation to be awarded in the proceeding.

20 (e) Any owner of or person entitled to any estate in or interested in any part of the land,  
21 or interest in it, taken, who cannot agree with the authority for the price of the land, or interest in  
22 it, taken, in which he or she is interested, may, within three (3) months after personal notice of the  
23 taking, or, if he or she has no personal notice, within one year from the first publication of the  
24 copy of the resolution and statement, apply, by petition, to the superior court in and for the county  
25 in which the land, or interest in it, lies, setting forth the taking of his or her land or interest in it,  
26 and praying for an assessment of damages by a jury. Upon filing of the petition, the court shall  
27 cause twenty (20) days' notice of the pendency of the petition to be given to the authority with a  
28 certified copy, and may proceed after the notice to the trial; and the trial shall determine all  
29 questions of fact relating to the value of the land, or interest in it, and the amount, and judgment  
30 shall be entered upon the verdict of the jury, and execution shall be issued against the money so  
31 deposited in court and in default against any other property of the authority. In case two (2) or  
32 more conflicting petitioners make claim to the same land, or to any interests in it, or to different  
33 interests in the same parcel of land, the court, upon motion, shall consolidate their several  
34 petitions for trial at the same time by the same jury, and may frame all necessary issues for the

1 trial; and all proceedings taken pursuant to the provisions of this chapter shall take precedence  
2 over all other civil matters then pending before the court, or if the superior court, in and for the  
3 county in which the land, or interest in it, lies, is not in session in that county, then the  
4 proceedings may be heard in the superior court for the counties of Providence and Bristol.

5 (f) If any lands, or interests in them, in which any minor, or other person not capable in  
6 law to act in his or her own behalf, is interested are taken by the authority under the provisions of  
7 this chapter, the superior court, upon the filing in the court of any petition by or in behalf of the  
8 minor or other person, may appoint a guardian ad litem for the minor or other person, and the  
9 guardian may appear and be heard in behalf of the minor or other person; and the guardian may  
10 also, with the advice and consent of the superior court and upon any terms that the superior court  
11 may prescribe, release to the authority all claims for damages for the lands of the minor or other  
12 person or for any interest in them. Any lawfully appointed, qualified, and acting guardian or other  
13 fiduciary of the estate of any minor or other person, with the approval of the court of probate  
14 within this state having jurisdiction to authorize the sale of lands and properties within this state  
15 of any minor or other person, may, before the filing of any petition, agree with the authority upon  
16 the amount of damages suffered by the minor or other person by any taking of his or her lands or  
17 of his or her interests in any lands, and may, upon receiving that amount, release to the authority  
18 all claims of damages of the minor or other person for the taking.

19 (g) Whenever, from time to time, the authority has satisfied the court that the amount  
20 deposited with the court is greater than is amply sufficient to satisfy the claims of all persons  
21 interested in the land, the court may order that the amount of any excess including any interest or  
22 increment on any sums so deposited be repaid to the authority. Whenever the authority has  
23 satisfied the court that the claims of all persons interested in the land taken have been satisfied,  
24 the unexpended balance, including any interest or increment on any sums deposited, shall be paid  
25 immediately to the authority.

26 (h) In any proceedings for the assessment of compensation and damages for land or  
27 interest in it taken, or to be taken by eminent domain by the authority, the following provisions  
28 are applicable:

29 (1) At any time during the pendency of any action or proceeding, the authority or an  
30 owner may apply to the court for an order directing an owner or the authority, as the case may be,  
31 to show cause why further proceedings should not be expedited, and the court may, upon that  
32 application, make an order requiring that the hearings proceed and that any other steps be taken  
33 with all possible expedition.

34 (2) If any of the land, or interest in it, is devoted to a public use, it may nevertheless be

1 acquired, and the taking shall be effective, provided, that no land, or interest in it, belonging to a  
2 public utilities administrator or other officer or tribunal having regulatory power over such a  
3 corporation is taken. Any land, or interest in it, already acquired by the authority may,  
4 nevertheless, be included within the taking for the purpose of acquiring any outstanding interests  
5 in the land.

6 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO TOWNS AND CITIES - EMINENT DOMAIN PROCEEDINGS

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- 1           This act would eliminate property in the town of Scituate delineated as lot 1 plat 38,
- 2 consisting of 67 acres, from being subject to eminent domain proceedings by the municipal public
- 3 building authority.
- 4           This act would take effect upon passage.

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