



**Adopted in House Comm. on Apr 12, 2006**

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1 AMENDMENT TO SENATE BILL 3086

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 3086, AS AMENDED,  
3 by replacing all of Section 1-1-5 with the following:

4 "Section 1-1-5. Definitions. As used in this Act, except  
5 with respect to the acquisition or damaging of property  
6 authorized under the O'Hare Modernization Act:

7 "Acquisition of property", unless the context otherwise  
8 requires, includes the acquisition, damaging, or use of  
9 property or any right to or interest in property.

10 "Blighted area", "blight", and "blighted" have the same  
11 meanings as under the applicable statute authorizing the  
12 condemning authority to exercise the power of eminent domain  
13 or, if those terms have no defined meaning under the applicable  
14 statute, then the same meanings as under Section 11-74.4-3 of  
15 the Illinois Municipal Code.

16 "Condemning authority" means the State or any unit of local  
17 government, school district, or other entity authorized to  
18 exercise the power of eminent domain."; and

19 by replacing all of Section 5-5-5 with the following:

20 "Section 5-5-5. Exercise of the power of eminent domain;  
21 public use; blight.

22 (a) In addition to all other limitations and requirements,  
23 a condemning authority may not take or damage property by the

1 exercise of the power of eminent domain unless it is for a  
2 public use, as set forth in this Section.

3 (a-5) Subsections (b), (c), (d), (e), and (f) of this  
4 Section do not apply to the acquisition of property under the  
5 O'Hare Modernization Act. A condemning authority may exercise  
6 the power of eminent domain for the acquisition of property  
7 under the O'Hare modernization Act or in furtherance of the  
8 goals or objectives of an existing redevelopment plan.

9 (a-10) Subsections (b), (c), (d), (e), and (f) of this  
10 Section do not apply to the acquisition or damaging of property  
11 in furtherance of the goals and objectives of an existing tax  
12 increment allocation redevelopment plan.

13 As used in this subsection, "existing tax increment  
14 allocation redevelopment plan" means a redevelopment plan that  
15 was adopted under the Tax Increment Allocation Redevelopment  
16 Act (Article 11, Division 74.4 of the Illinois Municipal Code)  
17 prior to April 15, 2006 and for which property assembly costs  
18 were, before that date, included as a budget line item in the  
19 plan or described in the narrative portion of the plan as part  
20 of the redevelopment project, but does not include (i) any  
21 additional area added to the redevelopment project area on or  
22 after April 15, 2006, (ii) any subsequent extension of the  
23 completion date of a redevelopment plan beyond the estimated  
24 completion date established in that plan prior to April 15,  
25 2006, (iii) any acquisition of property in a conservation area  
26 for which the condemnation complaint is filed more than 12  
27 years after the effective date of this Act, or (iv) any  
28 acquisition of property in an industrial park conservation  
29 area.

30 As used in this subsection, "conservation area" and  
31 "industrial park conservation area" have the same meanings as  
32 under Section 11-74.4-3 of the Illinois Municipal Code.

33 (b) If the exercise of eminent domain authority is to  
34 acquire property for public ownership and control and for a

1 public use, then the condemning authority must prove that (i)  
2 the acquisition of the property is necessary for a public  
3 purpose and (ii) the acquired property will be owned and  
4 controlled by the condemning authority or another governmental  
5 entity.

6 (c) Except when the acquisition is governed by subsection  
7 (b) or is primarily for one of the purposes specified in  
8 subsection (d), (e), or (f) and the condemning authority elects  
9 to proceed under one of those subsections, if the exercise of  
10 eminent domain authority is to acquire property for private  
11 ownership or control, or both, and for a public use, then the  
12 condemning authority must prove by clear and convincing  
13 evidence that the acquisition of the property for private  
14 ownership or control is (i) primarily for the benefit, use, or  
15 enjoyment of the public and (ii) necessary for a public  
16 purpose.

17 An acquisition of property primarily for the purpose of the  
18 elimination of blight is rebuttably presumed to be for a public  
19 purpose and primarily for the benefit, use, or enjoyment of the  
20 public under this subsection.

21 Any challenge to the existence of blighting factors alleged  
22 in a complaint to condemn under this subsection shall be raised  
23 within 6 months of the filing date of the complaint to condemn,  
24 and if not raised within that time the right to challenge the  
25 existence of those blighting factors shall be deemed waived.

26 Evidence that the Illinois Commerce Commission has granted  
27 a certificate or otherwise made a finding of public convenience  
28 and necessity for an acquisition of property (or any right or  
29 interest in property) for private ownership or control  
30 (including, without limitation, an acquisition for which the  
31 use of eminent domain is authorized under the Public Utilities  
32 Act, the Telephone Company Act, or the Electric Supplier Act)  
33 to be used for utility purposes creates a rebuttable  
34 presumption that such acquisition of that property (or right or

1 interest in property) is (i) primarily for the benefit, use, or  
2 enjoyment of the public and (ii) necessary for a public  
3 purpose.

4 In the case of an acquisition of property (or any right or  
5 interest in property) for private ownership or control to be  
6 used for utility, pipeline, or railroad purposes for which no  
7 certificate or finding of public convenience and necessity by  
8 the Illinois Commerce Commission is required, evidence that the  
9 acquisition is one for which the use of eminent domain is  
10 authorized under one of the following laws creates a rebuttable  
11 presumption that the acquisition of that property (or right or  
12 interest in property) is (i) primarily for the benefit, use, or  
13 enjoyment of the public and (ii) necessary for a public  
14 purpose:

15 (1) the Public Utilities Act,

16 (2) the Telephone Company Act,

17 (3) the Electric Supplier Act,

18 (4) the Railroad Terminal Authority Act,

19 (5) the Grand Avenue Railroad Relocation Authority  
20 Act,

21 (6) the West Cook Railroad Relocation and Development  
22 Authority Act,

23 (7) Section 4-505 of the Illinois Highway Code,

24 (8) Section 17 or 18 of the Railroad Incorporation Act,

25 (9) Section 18c-7501 of the Illinois Vehicle Code.

26 (d) If the exercise of eminent domain authority is to  
27 acquire property for private ownership or control and for a  
28 public use, and if the primary basis for the acquisition is the  
29 elimination of blight and the condemning authority elects to  
30 proceed under this subsection, then the condemning authority  
31 must: (i) prove by a preponderance of the evidence that  
32 acquisition of the property for private ownership or control is  
33 necessary for a public purpose; (ii) prove by a preponderance  
34 of the evidence that the property to be acquired is located in

1 an area that is currently designated as a blighted area or  
2 conservation area under an applicable statute; (iii) if the  
3 existence of blight or blighting factors is challenged in an  
4 appropriate motion filed within 6 months after the date of  
5 filing of the complaint to condemn, prove by a preponderance of  
6 the evidence that the required blighting factors existed in the  
7 area so designated (but not necessarily in the particular  
8 property to be acquired) at the time of the designation under  
9 item (ii) or at any time thereafter; and (iv) prove by a  
10 preponderance of the evidence at least one of the following:

11 (A) that it has entered into an express written  
12 agreement in which a private person or entity agrees to  
13 undertake a development project within the blighted area  
14 that specifically details the reasons for which the  
15 property or rights in that property are necessary for the  
16 development project;

17 (B) that the exercise of eminent domain power and the  
18 proposed use of the property by the condemning authority  
19 are consistent with a regional plan that has been adopted  
20 within the past 5 years in accordance with Section 5-14001  
21 of the Counties Code or Section 11-12-6 of the Illinois  
22 Municipal Code or with a local land resource management  
23 plan adopted under Section 4 of the Local Land Resource  
24 Management Planning Act; or

25 (C) that (1) the acquired property will be used in the  
26 development of a project that is consistent with the land  
27 uses set forth in a comprehensive redevelopment plan  
28 prepared in accordance with the applicable statute  
29 authorizing the condemning authority to exercise the power  
30 of eminent domain and is consistent with the goals and  
31 purposes of that comprehensive redevelopment plan, and (2)  
32 an enforceable written agreement, deed restriction, or  
33 similar encumbrance has been or will be executed and  
34 recorded against the acquired property to assure that the

1 project and the use of the property remain consistent with  
2 those land uses, goals, and purposes for a period of at  
3 least 40 years, which execution and recording shall be  
4 included as a requirement in any final order entered in the  
5 condemnation proceeding.

6 The existence of an ordinance, resolution, or other  
7 official act designating an area as blighted is not prima facie  
8 evidence of the existence of blight. A finding by the court in  
9 a condemnation proceeding that a property or area has not been  
10 proven to be blighted does not apply to any other case or  
11 undermine the designation of a blighted area or conservation  
12 area or the determination of the existence of blight for any  
13 other purpose or under any other statute, including without  
14 limitation under the Tax Increment Allocation Redevelopment  
15 Act (Article 11, Division 74.4 of the Illinois Municipal Code).

16 Any challenge to the existence of blighting factors alleged  
17 in a complaint to condemn under this subsection shall be raised  
18 within 6 months of the filing date of the complaint to condemn,  
19 and if not raised within that time the right to challenge the  
20 existence of those blighting factors shall be deemed waived.

21 (e) If the exercise of eminent domain authority is to  
22 acquire property for private ownership or control and for a  
23 public use, and if the primary purpose of the acquisition is  
24 one of the purposes specified in item (iii) of this subsection  
25 and the condemning authority elects to proceed under this  
26 subsection, then the condemning authority must prove by a  
27 preponderance of the evidence that: (i) the acquisition of the  
28 property is necessary for a public purpose; (ii) an enforceable  
29 written agreement, deed restriction, or similar encumbrance  
30 has been or will be executed and recorded against the acquired  
31 property to assure that the project and the use of the property  
32 remain consistent with the applicable purpose specified in item  
33 (iii) of this subsection for a period of at least 40 years,  
34 which execution and recording shall be included as a

1 requirement in any final order entered in the condemnation  
2 proceeding; and (iii) the acquired property will be one of the  
3 following:

4 (1) included in the project site for a residential  
5 project, or a mixed-use project including residential  
6 units, where not less than 20% of the residential units in  
7 the project are made available, for at least 15 years, by  
8 deed restriction, long-term lease, regulatory agreement,  
9 extended use agreement, or a comparable recorded  
10 encumbrance, to low-income households and very low-income  
11 households, as defined in Section 3 of the Illinois  
12 Affordable Housing Act;

13 (2) used primarily for public airport, road, parking,  
14 or mass transportation purposes and sold or leased to a  
15 private party in a sale-leaseback, lease-leaseback, or  
16 similar structured financing;

17 (3) owned or used by a public utility or electric  
18 cooperative for utility purposes;

19 (4) owned or used by a railroad for passenger or  
20 freight transportation purposes;

21 (5) sold or leased to a private party that operates a  
22 water supply, waste water, recycling, waste disposal,  
23 waste-to-energy, or similar facility;

24 (6) sold or leased to a not-for-profit corporation  
25 whose purposes include the preservation of open space, the  
26 operation of park space, and similar public purposes;

27 (7) used as a library, museum, or related facility, or  
28 as infrastructure related to such a facility;

29 (8) used by a private party for the operation of a  
30 charter school open to the general public; or

31 (9) a historic resource, as defined in Section 3 of the  
32 Illinois State Agency Historic Resources Preservation Act,  
33 a landmark designated as such under a local ordinance, or a  
34 contributing structure within a local landmark district

1 listed on the National Register of Historic Places, that is  
2 being acquired for purposes of preservation or  
3 rehabilitation.

4 (f) If the exercise of eminent domain authority is to  
5 acquire property for public ownership and private control and  
6 for a public use, and if the primary purpose of the acquisition  
7 is one of the purposes specified in item (iii) of this  
8 subsection and the condemning authority elects to proceed under  
9 this subsection, then the condemning authority must prove by a  
10 preponderance of the evidence that: (i) the acquisition of the  
11 property is necessary for a public purpose; (ii) the acquired  
12 property will be owned by the condemning authority or another  
13 governmental entity; and (iii) the acquired property will be  
14 controlled by a private party that operates a business or  
15 facility related to the condemning authority's operation of a  
16 university, medical district, hospital, exposition or  
17 convention center, mass transportation facility, or airport,  
18 including, but not limited to, a medical clinic, research and  
19 development center, food or commercial concession facility,  
20 social service facility, maintenance or storage facility,  
21 cargo facility, rental car facility, bus facility, taxi  
22 facility, flight kitchen, fixed based operation, parking  
23 facility, refueling facility, water supply facility, and  
24 railroad tracks and stations.

25 (g) This Article is a limitation on the exercise of the  
26 power of eminent domain, but is not an independent grant of  
27 authority to exercise the power of eminent domain."; and

28 by replacing all of Section 10-5-60 with the following:

29 "(was 735 ILCS 5/7-121)

30 Section 10-5-60 ~~7-121~~. Value. Except as to property  
31 designated as possessing a special use, the fair cash market  
32 value of property in a proceeding in eminent domain shall be



1 the amount of money that ~~which~~ a purchaser, willing, but not  
2 obligated, to buy the property, would pay to an owner willing,  
3 but not obliged, to sell in a voluntary sale. ~~which~~

4 The amount of money shall be determined and ascertained as  
5 of the date of filing the complaint to condemn, except that:

6 (i) in the case of property not being acquired under  
7 Article 20 (quick-take), if the trial commences more than 2  
8 years after the date of filing the complaint to condemn,  
9 the court may, in the interest of justice and equity,  
10 declare a valuation date no sooner than the date of filing  
11 the complaint to condemn and no later than the date of  
12 commencement of the trial; and

13 (ii) in the case of property that is being acquired  
14 under Article 20 (quick-take), if the trial commences more  
15 than 2 years after the date of filing the complaint to  
16 condemn, the court may, in the interest of justice and  
17 equity, declare a valuation date no sooner than the date of  
18 filing the complaint to condemn and no later than the date  
19 on which the condemning authority took title to the  
20 property.

21 In the condemnation of property for a public improvement,  
22 there shall be excluded from the fair cash market value of the  
23 property ~~such amount of money~~ any appreciation in value  
24 proximately caused by the ~~such~~ improvement, and any  
25 depreciation in value proximately caused by the ~~such~~  
26 improvement. However, such appreciation or depreciation shall  
27 not be excluded when ~~where~~ property is condemned for a separate  
28 project conceived independently of and subsequent to the  
29 original project.

30 (Source: P.A. 82-280.)"; and

31 by replacing all of Section 10-5-62 with the following:

32 "Section 10-5-62. Relocation costs. Except when federal

1 funds are available for the payment of direct financial  
2 assistance to persons displaced by the acquisition of their  
3 real property, in all condemnation proceedings for the taking  
4 or damaging of real property under the exercise of the power of  
5 eminent domain, the condemning authority shall pay to displaced  
6 persons reimbursement for their reasonable relocation costs,  
7 determined in the same manner as under the federal Uniform  
8 Relocation Assistance and Real Property Acquisition Policies  
9 Act of 1970, as amended from time to time, and as implemented  
10 by regulations promulgated under that Act. This Section does  
11 not apply to the acquisition of property under the O'Hare  
12 Modernization Act."; and

13 by replacing all of Section 10-5-105 with the following:

14 "Section 10-5-105. Sale of certain property acquired by  
15 condemnation.

16 (a) This Section applies only to property that (i) has been  
17 acquired after the effective date of this Act by condemnation  
18 or threat of condemnation, (ii) was acquired for public  
19 ownership and control by the condemning authority or another  
20 public entity, and (iii) has been under the ownership and  
21 control of the condemning authority or that other public entity  
22 for a total of less than 5 years.

23 As used in this Section, "threat of condemnation" means  
24 that the condemning authority has made an offer to purchase  
25 property and has the authority to exercise the power of eminent  
26 domain with respect to that property.

27 (b) Any governmental entity seeking to dispose of property  
28 to which this Section applies must dispose of that property in  
29 accordance with this Section, unless disposition of that  
30 property is otherwise specifically authorized or prohibited by  
31 law enacted by the General Assembly before, on, or after the  
32 effective date of this Act.

1           (c) The sale or public auction by the State of property to  
2 which this Section applies must be conducted in the manner  
3 provided in the State Property Control Act for the disposition  
4 of surplus property.

5           (d) The sale or public auction by a municipality of  
6 property to which this Section applies must be conducted in  
7 accordance with Section 11-76-4.1 or 11-76-4.2 of the Illinois  
8 Municipal Code.

9           (e) The sale or public auction by any other unit of local  
10 government or school district or property to which this Section  
11 applies must be conducted in accordance with this subsection  
12 (e). The corporate authorities of the the unit of local  
13 government or school district, by resolution, may authorize the  
14 sale or public auction of the property as surplus public real  
15 estate. The value of the real estate shall be determined by a  
16 written MAI-certified appraisal or by a written certified  
17 appraisal of a State-certified or State-licensed real estate  
18 appraiser. The appraisal shall be available for public  
19 inspection. The resolution may direct the sale to be conducted  
20 by the staff of the unit of local government or school  
21 district; by listing with local licensed real estate agencies,  
22 in which case the terms of the agent's compensation shall be  
23 included in the resolution; or by public auction. The  
24 resolution shall be published at the first opportunity  
25 following its passage in a newspaper or newspapers published in  
26 the county or counties in which the unit of local government or  
27 school district is located. The resolution shall also contain  
28 pertinent information concerning the size, use, and zoning of  
29 the real estate and the terms of sale. The corporate  
30 authorities of the unit of local government or school district  
31 may accept any contract proposal determined by them to be in  
32 the best interest of the unit of local government or school  
33 district by a vote of two-thirds of the members of the  
34 corporate authority of the unit of local government or school

1 district then holding office, but in no event at a price less  
2 than 80% of the appraised value.

3 (f) This Section does not apply to the acquisition of  
4 property under the O'Hare Modernization Act."; and

5 by replacing all of Section 10-5-110 with the following:

6 "Section 10-5-110. Offers of settlement by defendant;  
7 attorney's fees and litigation expenses.

8 (a) This Section applies only to proceedings for the  
9 acquisition of property for private ownership or control that  
10 are subject to subsection (c), (d), (e), or (f) of Section  
11 5-5-5.

12 (b) At any time between (i) the close of discovery in  
13 accordance with Supreme Court Rule 218(c), as now or hereafter  
14 amended, or another date set by the court or agreed to by the  
15 parties, and (ii) 14 days before the commencement of trial to  
16 determine final just compensation, any defendant may serve upon  
17 the plaintiff a written offer setting forth the amount of  
18 compensation that the defendant will accept for the taking of  
19 that defendant's interest in the property. If the defendant  
20 does not make such an offer, the defendant shall not be  
21 entitled to the attorney's fees and other reimbursement  
22 provided under subsection (e) of this Section.

23 (c) If, within 10 days after service of the offer, the  
24 plaintiff serves written notice upon that defendant that the  
25 offer is accepted, then either of those parties may file a copy  
26 of the offer and a copy of the notice of acceptance together  
27 with proof of service of the notice. The court shall then enter  
28 judgment.

29 (d) An offer that is not accepted within the 10-day period  
30 is deemed to be withdrawn and evidence of the offer is not  
31 admissible at trial.

32 (e) If a plaintiff does not accept an offer as provided in

1 subsection (c) and if the final just compensation for the  
2 defendant's interest is determined by the trier of fact to be  
3 equal to or in excess of the amount of the defendant's last  
4 written offer under subsection (b), then the court must order  
5 the plaintiff to pay to the defendant that defendant's  
6 attorney's fees as calculated under subsection (f) of this  
7 Section. The plaintiff shall also pay to the defendant that  
8 defendant's reasonable costs and litigation expenses,  
9 including, without limitation, expert witness and appraisal  
10 fees, incurred after the making of the defendant's last written  
11 offer under subsection (b).

12 (f) Any award of attorney's fees under this Section shall  
13 be based solely on the net benefit achieved for the property  
14 owner, except that the court may also consider any non-monetary  
15 benefits obtained for the property owner through the efforts of  
16 the attorney to the extent that the non-monetary benefits are  
17 specifically identified by the court and can be quantified by  
18 the court with a reasonable degree of certainty. "Net benefit"  
19 means the difference, exclusive of interest, between the final  
20 judgment or settlement and the last written offer made by the  
21 condemning authority before the filing date of the condemnation  
22 complaint. The award shall be calculated as follows, subject to  
23 the Illinois Rules of Professional Conduct:

24 (1) 33% of the net benefit if the net benefit is  
25 \$250,000 or less;

26 (2) 25% of the net benefit if the net benefit is more  
27 than \$250,000 but less than \$1 million; or

28 (3) 20% of the net benefit if the net benefit is \$1  
29 million or more.

30 (g) This Section does not apply to the acquisition of  
31 property under the O'Hare Modernization Act.

32 Section 10-5-115. Eligible costs. Any cost required to be  
33 paid by a condemning authority under this Act, including, but

1 not limited to, relocation costs and attorney's fees, shall be  
2 deemed a redevelopment project cost or eligible cost under the  
3 statute pursuant to which the condemning authority exercised  
4 its power of eminent domain, even if those costs are not  
5 identified as such as of the effective date of this Act."; and

6 by replacing all of Section 90-5-5 with the following:

7 "Section 90-5-5. Applicability. This Act applies only to  
8 complaints to condemn that are filed on or after its effective  
9 date."; and

10 by replacing all of Section 99-5-5 with the following:

11 "Section 99-5-5. Effective date. This Act takes effect on  
12 January 1, 2007.".