



Rep. John E. Bradley

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LRB094 19181 RCE 58415 a

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 or damaging of  
7 property under the O'Hare Modernization Act as provided for by  
8 law in effect prior to the effective date of this Act.

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. A condemning  
13 authority may exercise the power of eminent domain for the  
14 acquisition of property in furtherance of an existing tax  
15 increment allocation redevelopment plan as provided for by law  
16 in effect prior to the effective date of this Act.

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

34 As used in this subsection, "conservation area" and

1 "industrial park conservation area" have the same meanings as  
2 under Section 11-74.4-3 of the Illinois Municipal Code.

3 (b) If the exercise of eminent domain authority is to  
4 acquire property for public ownership and control, then the  
5 condemning authority must prove that (i) the acquisition of the  
6 property is necessary for a public purpose and (ii) the  
7 acquired property will be owned and controlled by the  
8 condemning authority or another governmental entity.

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

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

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

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

1 to be used for utility purposes creates a rebuttable  
2 presumption that such acquisition of that property (or right or  
3 interest in property) is (i) primarily for the benefit, use, or  
4 enjoyment of the public and (ii) necessary for a public  
5 purpose.

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

- 17 (1) the Public Utilities Act,
- 18 (2) the Telephone Company Act,
- 19 (3) the Electric Supplier Act,
- 20 (4) the Railroad Terminal Authority Act,
- 21 (5) the Grand Avenue Railroad Relocation Authority  
22 Act,
- 23 (6) the West Cook Railroad Relocation and Development  
24 Authority Act,
- 25 (7) Section 4-505 of the Illinois Highway Code,
- 26 (8) Section 17 or 18 of the Railroad Incorporation Act,
- 27 (9) Section 18c-7501 of the Illinois Vehicle Code.

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

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

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

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

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

1 similar encumbrance has been or will be executed and  
2 recorded against the acquired property to assure that the  
3 project and the use of the property remain consistent with  
4 those land uses, goals, and purposes for a period of at  
5 least 40 years, which execution and recording shall be  
6 included as a requirement in any final order entered in the  
7 condemnation proceeding.

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

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

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

1 subsection for a period of at least 40 years, which execution  
2 and recording shall be included as a requirement in any final  
3 order entered in the condemnation proceeding; and (iii) the  
4 acquired property will be one of the following:

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

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

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

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

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

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

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

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

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

1 contributing structure within a local landmark district  
2 listed on the National Register of Historic Places, that is  
3 being acquired for purposes of preservation or  
4 rehabilitation.

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

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

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

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

31 Section 10-5-60 ~~7-121~~. Value. Except as to property  
32 designated as possessing a special use, the fair cash market



1 value of property in a proceeding in eminent domain shall be  
2 the amount of money that ~~which~~ a purchaser, willing, but not  
3 obligated, to buy the property, would pay to an owner willing,  
4 but not obliged, to sell in a voluntary sale, ~~which~~

5 For the acquisition or damaging of property under the  
6 O'Hare Modernization Act, the amount shall be determined as of  
7 the date of filing the complaint to condemn. For the  
8 acquisition of other property, the amount of money shall be  
9 determined and ascertained as of the date of filing the  
10 complaint to condemn, except that:

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

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

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

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

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

3 "Section 10-5-62. Relocation costs. Except when federal  
4 funds are available for the payment of direct financial  
5 assistance to persons displaced by the acquisition of their  
6 real property, in all condemnation proceedings for the taking  
7 or damaging of real property under the exercise of the power of  
8 eminent domain, the condemning authority shall pay to displaced  
9 persons reimbursement for their reasonable relocation costs,  
10 determined in the same manner as under the federal Uniform  
11 Relocation Assistance and Real Property Acquisition Policies  
12 Act of 1970, as amended from time to time, and as implemented  
13 by regulations promulgated under that Act. This Section does  
14 not apply to the acquisition or damaging of property under the  
15 O'Hare Modernization Act."; and

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

17 "Section 10-5-105. Sale of certain property acquired by  
18 condemnation.

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

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

30 (b) Any governmental entity seeking to dispose of property

1 to which this Section applies must dispose of that property in  
2 accordance with this Section, unless disposition of that  
3 property is otherwise specifically authorized or prohibited by  
4 law enacted by the General Assembly before, on, or after the  
5 effective date of this Act.

6 (c) The sale or public auction by the State of property to  
7 which this Section applies must be conducted in the manner  
8 provided in the State Property Control Act for the disposition  
9 of surplus property.

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

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

1 authorities of the unit of local government or school district  
2 may accept any contract proposal determined by them to be in  
3 the best interest of the unit of local government or school  
4 district by a vote of two-thirds of the members of the  
5 corporate authority of the unit of local government or school  
6 district then holding office, but in no event at a price less  
7 than 80% of the appraised value.

8 (f) This Section does not apply to the acquisition or  
9 damaging of property under the O'Hare Modernization Act."; and

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

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

13 (a) This Section applies only to proceedings for the  
14 acquisition of property for private ownership or control that  
15 are subject to subsection (c), (d), (e), or (f) of Section  
16 5-5-5.

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

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

1 judgment.

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

5 (e) If a plaintiff does not accept an offer as provided in  
6 subsection (c) and if the final just compensation for the  
7 defendant's interest is determined by the trier of fact to be  
8 equal to or in excess of the amount of the defendant's last  
9 written offer under subsection (b), then the court must order  
10 the plaintiff to pay to the defendant that defendant's  
11 attorney's fees as calculated under subsection (f) of this  
12 Section. The plaintiff shall also pay to the defendant that  
13 defendant's reasonable costs and litigation expenses,  
14 including, without limitation, expert witness and appraisal  
15 fees, incurred after the making of the defendant's last written  
16 offer under subsection (b).

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

29 (1) 33% of the net benefit if the net benefit is  
30 \$250,000 or less;

31 (2) 25% of the net benefit if the net benefit is more  
32 than \$250,000 but less than \$1 million; or

33 (3) 20% of the net benefit if the net benefit is \$1  
34 million or more.

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

3 Section 10-5-115. Eligible costs. Any cost required to be  
4 paid by a condemning authority under this Act, including, but  
5 not limited to, relocation costs and attorney's fees, shall be  
6 deemed a redevelopment project cost or eligible cost under the  
7 statute pursuant to which the condemning authority exercised  
8 its power of eminent domain, even if those costs are not  
9 identified as such as of the effective date of this Act."; and

10 by replacing all of Section 15-1-5 with the following:

11 "Section 15-1-5. Grants of power in other statutes; this  
12 Act controls. The State of Illinois and its various  
13 subdivisions and agencies, and all units of local government,  
14 school districts, and other entities, have the powers of  
15 condemnation and eminent domain that are (i) expressly provided  
16 in this Act or (ii) expressly provided in any other provision  
17 of law. Those powers may be exercised, however, only in  
18 accordance with this Act. If any power of condemnation or  
19 eminent domain that arises under any other provision of law is  
20 in conflict with this Act, this Act controls. This Section does  
21 not apply to the acquisition or damaging of property under the  
22 O'Hare Modernization Act."; and

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

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

27 by deleting Section 95-5-845; and

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

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