



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

HB2558

by Rep. Robyn Gabel

#### SYNOPSIS AS INTRODUCED:

735 ILCS 30/5-5-5

Amends the Eminent Domain Act. Provides that a public university of this State may not acquire property by condemnation or eminent domain if the university's current land holdings are sufficient to accommodate the development of the university's planned improvements. Provides that if an attempt is made to take private property due to the alleged inadequacy of the university's current land holdings, the question whether the current land holdings are truly not adequate shall be a judicial question and determined without regard to any administrative or legislative assertion that the university lacks the land necessary to erect its planned improvements. Provides that a public university of this State may not acquire property by condemnation or eminent domain to advance the economic interest of private parties to be given ownership or use of the property taken. States that the new provisions apply to all condemnations by public universities in this State pending or filed after the effective date of the amendatory Act.

LRB099 07375 HEP 27491 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Eminent Domain Act is amended by changing  
5 Section 5-5-5 as follows:

6 (735 ILCS 30/5-5-5)

7 Sec. 5-5-5. Exercise of the power of eminent domain; public  
8 use; blight.

9 (a) In addition to all other limitations and requirements,  
10 a condemning authority may not take or damage property by the  
11 exercise of the power of eminent domain unless it is for a  
12 public use, as set forth in this Section.

13 (a-5) Subsections (b), (c), (d), (e), and (f) of this  
14 Section do not apply to the acquisition of property under the  
15 O'Hare Modernization Act. A condemning authority may exercise  
16 the power of eminent domain for the acquisition or damaging of  
17 property under the O'Hare Modernization Act as provided for by  
18 law in effect prior to the effective date of this Act.

19 (a-10) Subsections (b), (c), (d), (e), and (f) of this  
20 Section do not apply to the acquisition or damaging of property  
21 in furtherance of the goals and objectives of an existing tax  
22 increment allocation redevelopment plan. A condemning  
23 authority may exercise the power of eminent domain for the

1 acquisition of property in furtherance of an existing tax  
2 increment allocation redevelopment plan as provided for by law  
3 in effect prior to the effective date of this Act.

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

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

24 (b) If the exercise of eminent domain authority is to  
25 acquire property for public ownership and control, then the  
26 condemning authority must prove that (i) the acquisition of the

1 property is necessary for a public purpose and (ii) the  
2 acquired property will be owned and controlled by the  
3 condemning authority or another governmental entity.

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

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

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 Evidence that the Illinois Commerce Commission has granted  
24 a certificate or otherwise made a finding of public convenience  
25 and necessity for an acquisition of property (or any right or  
26 interest in property) for private ownership or control

1 (including, without limitation, an acquisition for which the  
2 use of eminent domain is authorized under the Public Utilities  
3 Act, the Telephone Company Act, or the Electric Supplier Act)  
4 to be used for utility purposes creates a rebuttable  
5 presumption that such acquisition of that property (or right or  
6 interest in property) is (i) primarily for the benefit, use, or  
7 enjoyment of the public and (ii) necessary for a public  
8 purpose.

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

20 (1) the Public Utilities Act,

21 (2) the Telephone Company Act,

22 (3) the Electric Supplier Act,

23 (4) the Railroad Terminal Authority Act,

24 (5) the Grand Avenue Railroad Relocation Authority  
25 Act,

26 (6) the West Cook Railroad Relocation and Development

1 Authority Act,

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

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

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

5 (d) If the exercise of eminent domain authority is to  
6 acquire property for private ownership or control and if the  
7 primary basis for the acquisition is the elimination of blight  
8 and the condemning authority elects to proceed under this  
9 subsection, then the condemning authority must: (i) prove by a  
10 preponderance of the evidence that acquisition of the property  
11 for private ownership or control is necessary for a public  
12 purpose; (ii) prove by a preponderance of the evidence that the  
13 property to be acquired is located in an area that is currently  
14 designated as a blighted area or conservation area under an  
15 applicable statute; (iii) if the existence of blight or  
16 blighting factors is challenged in an appropriate motion filed  
17 within 6 months after the date of filing of the complaint to  
18 condemn, prove by a preponderance of the evidence that the  
19 required blighting factors existed in the area so designated  
20 (but not necessarily in the particular property to be acquired)  
21 at the time of the designation under item (ii) or at any time  
22 thereafter; and (iv) prove by a preponderance of the evidence  
23 at least one of the following:

24 (A) that it has entered into an express written  
25 agreement in which a private person or entity agrees to  
26 undertake a development project within the blighted area

1           that specifically details the reasons for which the  
2           property or rights in that property are necessary for the  
3           development project;

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

12          (C) that (1) the acquired property will be used in the  
13          development of a project that is consistent with the land  
14          uses set forth in a comprehensive redevelopment plan  
15          prepared in accordance with the applicable statute  
16          authorizing the condemning authority to exercise the power  
17          of eminent domain and is consistent with the goals and  
18          purposes of that comprehensive redevelopment plan, and (2)  
19          an enforceable written agreement, deed restriction, or  
20          similar encumbrance has been or will be executed and  
21          recorded against the acquired property to assure that the  
22          project and the use of the property remain consistent with  
23          those land uses, goals, and purposes for a period of at  
24          least 40 years, which execution and recording shall be  
25          included as a requirement in any final order entered in the  
26          condemnation proceeding.

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

11           Any challenge to the existence of blighting factors alleged  
12 in a complaint to condemn under this subsection shall be raised  
13 within 6 months of the filing date of the complaint to condemn,  
14 and if not raised within that time the right to challenge the  
15 existence of those blighting factors shall be deemed waived.

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



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

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

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

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

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

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

26 (6) sold or leased to a not-for-profit corporation

1           whose purposes include the preservation of open space, the  
2           operation of park space, and similar public purposes;

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

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

7           (9) a historic resource, as defined in Section 3 of the  
8           Illinois State Agency Historic Resources Preservation Act,  
9           a landmark designated as such under a local ordinance, or a  
10          contributing structure within a local landmark district  
11          listed on the National Register of Historic Places, that is  
12          being acquired for purposes of preservation or  
13          rehabilitation.

14          (f) If the exercise of eminent domain authority is to  
15          acquire property for public ownership and private control and  
16          if the primary purpose of the acquisition is one of the  
17          purposes specified in item (iii) of this subsection and the  
18          condemning authority elects to proceed under this subsection,  
19          then the condemning authority must prove by a preponderance of  
20          the evidence that: (i) the acquisition of the property is  
21          necessary for a public purpose; (ii) the acquired property will  
22          be owned by the condemning authority or another governmental  
23          entity; and (iii) the acquired property will be controlled by a  
24          private party that operates a business or facility related to  
25          the condemning authority's operation of a university, medical  
26          district, hospital, exposition or convention center, mass

1 transportation facility, or airport, including, but not  
2 limited to, a medical clinic, research and development center,  
3 food or commercial concession facility, social service  
4 facility, maintenance or storage facility, cargo facility,  
5 rental car facility, bus facility, taxi facility, flight  
6 kitchen, fixed based operation, parking facility, refueling  
7 facility, water supply facility, and railroad tracks and  
8 stations.

9 (f-5) Notwithstanding any other provision of law, a public  
10 university of this State may not acquire property by  
11 condemnation or eminent domain:

12 (1) If the university's current land holdings are  
13 sufficient to accommodate the development of the  
14 university's planned improvements. If an attempt is made to  
15 take private property due to the alleged inadequacy of the  
16 university's current land holdings, the question whether  
17 the current land holdings are truly not adequate shall be a  
18 judicial question and determined without regard to any  
19 administrative or legislative assertion that the  
20 university lacks the land necessary to erect its planned  
21 improvements.

22 (2) To advance the economic interest of private parties  
23 to be given ownership or use of the property taken.

24 This subsection applies to all condemnations by public  
25 universities in this State pending or filed after the effective  
26 date of this amendatory Act of the 99th General Assembly.

1           (g) This Article is a limitation on the exercise of the  
2 power of eminent domain, but is not an independent grant of  
3 authority to exercise the power of eminent domain.

4           (Source: P.A. 94-1055, eff. 1-1-07.)