

**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2006**

**A N A C T**

**RELATING TO STATE AFFAIRS AND GOVERNMENT -- EMINENT DOMAIN**

Introduced By: Senators Sheehan, Tassoni, Lenihan, Paiva-Weed, and Algieri

Date Introduced: January 24, 2006

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 42 of the General Laws entitled "Public Property and Works" is  
2 hereby amended by adding thereto the following chapter:

3 CHAPTER 64.12

4 EMINENT DOMAIN

5 **42-64.12-1. Short title.** – This act shall be known as and may be cited as the "Rhode  
6 Island Home and Business Protection Act of 2006."

7 **42-64.12-2. Legislative findings.** – The general assembly finds and declares that:

8 (a) Eminent domain is an inherent and historic attribute of the sovereign power of  
9 government and has been affirmed as such by federal and state courts.

10 (b) The framers of the United States Constitution understood that the right to own  
11 property is the cornerstone of liberty and freedom, is essential to life, liberty and the pursuit of  
12 happiness, and that the private ownership of property is an essential element of a free,  
13 independent and civil society;

14 (c) The general assembly has delegated eminent domain powers over the years to an array  
15 of entities including, but not limited to, departments, agencies, authorities, corporations,  
16 instrumentalities, and political subdivisions of the state;

17 (d) The functions of government have changed over the years and continue to evolve in  
18 manners which affect and can potentially affect the use of eminent domain powers delegated by  
19 the general assembly;

1 (e) Among the broad and more recently evolved powers of government are those  
2 pertaining to economic development purposes;

3 (f) The US Supreme Court in Kelo v. City of New London both affirmed the use of  
4 eminent domain powers for economic development purposes, and encouraged states to define and  
5 limit the exercise of eminent domain for economic development purposes.

6 **42-64.12-3. Purposes of chapter.** – The purposes of this chapter are to set forth  
7 permissible uses of eminent domain power and to define, limit and restrict the use of eminent  
8 domain for economic development purposes.

9 **42-64.12-4. Applicability.** – The provisions of this chapter shall apply to all departments,  
10 agencies, authorities, corporations, instrumentalities and political subdivisions of the state and to  
11 all other entities that have been delegated eminent domain powers by state law.

12 **42-64.12-5. Definitions.** – The following words and phrases when used in this chapter  
13 shall have, unless the context clearly indicates otherwise, the meanings given to them in this  
14 section:

15 (a) "Economic development" means the mobilization of intellectual, human, capital,  
16 physical and natural resources to generate marketable goods and services for purposes including,  
17 but not limited to, creating jobs, economic and employment opportunities, tax base, and wealth.

18 (b) "Person" means any individual, group of individuals, firm, corporation, association,  
19 partnership, or public or private entity.

20 (c) "Plan" or "development plan" means a plan that substantially conforms to the  
21 requirements of subsection 42-64.12-7(a) of this chapter, which plan may be prepared and  
22 adopted pursuant to other applicable provisions of law.

23 (d) "Property" means land or other real property or any interest, estate, or right therein.

24 (e) "Public ownership and use" means the right of a public body to possess, use, and/or  
25 enjoy property in order to conduct a governmental function or to provide for a public activity.

26 **42-64.12-6. Permissible uses of eminent domain powers.** – All entities delegated  
27 eminent powers under the laws of this state may exercise such powers consistent with other  
28 restrictions and limitations established by law, rule, regulation, or ordinance, to acquire property  
29 for any of the following purposes:

30 (a) Providing for public ownership and use;

31 (b) Providing for transportation infrastructure and uses, public utilities, including  
32 telecommunications, and common carriers;

33 (c) Eliminating an identifiable public harm and/or correcting conditions adversely  
34 affecting public health, safety, morals, or welfare, including, but not limited to, eliminating and

1 preventing blighted and substandard areas, as defined by chapter 45-31, and correcting conditions  
2 of environmental contamination that pose a significant risk to public health, correcting and  
3 repairing facilities and conditions from damage that resulted from a declared disaster.

4 (d) Providing good and marketable title that is free and clear of liens and encumbrances,  
5 when property is acquired or is to be conveyed for any of the purposes set forth in subdivisions  
6 (a) through (c) of this section.

7 **42-64.12-7. Restricted use of eminent domain powers.** – No entity subject to the  
8 provisions of the chapter shall exercise eminent powers to acquire any property for economic  
9 development purposes unless it has explicit authority to do so and unless it conforms to the  
10 provisions of this section.

11 (a) Plan. The entity shall have a plan for the proposed development, which shall be  
12 approved by the governing body of the entity prior to the initiation of any eminent domain  
13 proceeding, which plan shall set forth the purposes of the development, the intended benefits to  
14 the community, the necessary infrastructure improvements, the presence and correction of any  
15 substandard conditions and/or environmental hazards, and the parcels which will be acquired in  
16 order to effectuate the plan. In addition, the plan shall include provisions and/or analyses which  
17 can support a rational basis determination that potential takings by eminent domain do not confer  
18 a preponderance of benefits on particular favored private entity or entities with only incidental or  
19 pretextual public benefits. The plan shall only be adopted after public notice of not less than  
20 fourteen (14) days, a public hearing and a period for public comment of not less than thirty (30)  
21 days. Where other applicable planning requirements are established by law, those planning  
22 requirements shall not be deemed to be superceded by the requirements of this subsection,  
23 provided, that the plan prepared pursuant to such planning requirements substantially addresses  
24 the matters specified in this subsection and the opportunity for public review and comment is no  
25 less than that provided for by this subsection.

26 (b) Notice. The entity shall give the owner(s) of property which may be acquired by  
27 eminent domain advanced notice of the potential taking and shall provide the opportunity to sell  
28 the property for a negotiated, mutually agreed upon price.

29 (c) Except for taking of temporary easements and partial takings subject to the provisions  
30 of section 42-64.12-10, no local government entity shall implement any eminent domain  
31 proceeding for economic development purposes unless the acquisition of the property by eminent  
32 domain has been approved by the city or town council, and no state government entity shall  
33 implement any eminent domain proceeding for economic development purposes unless the  
34 acquisition of the property by eminent domain has been approved by an act of the general

1 assembly.

2 **42-64.12-8. Compensation for eminent domain taking for economic development**

3 **purposes.** – Owners of property taken for economic development purposes shall be compensated

4 for:

5 (a) The fair market value of the property or of like-kind property, whichever amount is  
6 the greater.

7 (b) Expenses incidental to transfer of ownership to the acquiring entity, including, but not  
8 limited to, recording fees and transfer taxes, evidence of title and surveys and legal descriptions,  
9 penalty costs and other charges for prepaying mortgages entered into in good faith, a pro-rata  
10 share of any prepaid property taxes or assessments for public utilities.

11 (c) Relocation expenses, including, but not limited to, actual, reasonable and necessary  
12 moving and reestablishment expenses.

13 **42-64.12-9. Powers of local redevelopment.** – The provisions of this chapter with  
14 exception of subsection 42-64.12-7(c) shall not be deemed to abrogate or diminish the powers  
15 heretofore exercised by local governments and local redevelopment agencies, as provided for in  
16 chapters 45-31 and 45-32 of the general laws, to undertake redevelopment projects.

17 **42-64.12-10. Temporary easements and partial takings .** – The planning requirements  
18 and the restrictions established by this chapter shall not apply to condemnations for easements or  
19 other partial takings for less than five (5) years duration where the effect of the taking is not the  
20 ousting of the owner from possession or the displacing of a lawful occupant.

21 **42-64.12-11. Severability.** – If any provision of this chapter, or the application thereof to  
22 any person or circumstances, shall be held invalid, any invalidity shall not affect the provisions or  
23 application of this chapter which can be given effect without the invalid provision or application,  
24 and to this end the provisions of the chapter are declared to be severable.

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

=====  
LC01019/SUB A/2  
=====

EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO STATE AFFAIRS AND GOVERNMENT -- EMINENT DOMAIN

\*\*\*

1           This act would define, limit and restrict the use of eminent domain for economic  
2 development purposes.

3           This act would take effect upon passage.

=====  
LC01019/SUB A/  
=====