



House of Representatives

General Assembly

File No. 504

February Session, 2006

House Bill No. 5810

House of Representatives, April 12, 2006

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT LIMITING THE USE OF EMINENT DOMAIN BY MUNICIPALITIES AND MUNICIPAL DEVELOPMENT AGENCIES AND ESTABLISHING AN OFFICE OF PROPERTY RIGHTS OMBUDSMAN.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 8-193 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) After approval of the development plan as provided in this
4 chapter, the development agency may proceed by purchase, lease,
5 exchange or gift with the acquisition or rental of real property within
6 the project area and real property and interests therein for rights-of-
7 way and other easements to and from the project area. [The
8 development agency may, with the approval of the legislative body,
9 and in the name of the municipality, acquire by eminent domain real
10 property located within the project area and real property and interests
11 therein for rights-of-way and other easements to and from the project
12 area, in the same manner that a redevelopment agency may acquire
13 real property under sections 8-128 to 8-133, inclusive, as if said sections

14 specifically applied to development agencies.] The development
15 agency may, with the approval of the legislative body and, of the
16 commissioner if any grants were made by the state under section 8-190
17 or 8-195 for such development project, and in the name of such
18 municipality, transfer by sale or lease at fair market value or fair rental
19 value, as the case may be, the whole or any part of the real property in
20 the project area to any person, in accordance with the project plan and
21 such disposition plans as may have been determined by the
22 commissioner.

23 (b) A development agency shall have all the powers necessary or
24 convenient to undertake and carry out development plans and
25 development projects, including the power to clear, demolish, repair,
26 rehabilitate, operate, or insure real property while it is in its
27 possession, to make site improvements essential to the preparation of
28 land for its use in accordance with the development plan, to install,
29 construct or reconstruct streets, utilities and other improvements
30 necessary for carrying out the objectives of the development project,
31 and, in distressed municipalities, as defined in section 32-9p, to lend
32 funds to businesses and industries in a manner approved by the
33 commissioner.

34 Sec. 2. Subsection (g) of section 32-224 of the general statutes is
35 repealed and the following is substituted in lieu thereof (*Effective from*
36 *passage*):

37 (g) After approval of the development plan pursuant to sections 32-
38 220 to 32-234, inclusive, the implementing agency may by purchase,
39 lease, exchange or gift acquire or rent real property necessary or
40 appropriate for the project as identified in the development plan and
41 real property and interests therein for rights-of-way and other
42 easements to and from the project area. [The implementing agency
43 may, with the approval of the legislative body of the municipality, and
44 in the name of the municipality, condemn in accordance with section
45 8-128 to 8-133, inclusive, any real property necessary or appropriate for
46 the project as identified in the development plan, including real

47 property and interests in land for rights-of-way and other easements to
48 and from the project area.]

49 Sec. 3. Subdivision (3) of subsection (c) of section 7-148 of the
50 general statutes is repealed and the following is substituted in lieu
51 thereof (*Effective from passage*):

52 (3) (A) Take or acquire by gift, purchase, grant, including any grant
53 from the United States or the state, bequest or devise and hold,
54 condemn, lease, sell, manage, transfer, release and convey such real
55 and personal property or interest therein absolutely or in trust as the
56 purposes of the municipality or any public use or purpose, including
57 that of education, art, ornament, health, charity or amusement,
58 cemeteries, parks or gardens, or the erection or maintenance of statues,
59 monuments, buildings or other structures, [or the encouragement of
60 private commercial development,] require, except that no property
61 may be condemned for purposes of a development project as defined
62 in section 8-187. Any lease of real or personal property or any interest
63 therein, either as lessee or lessor, may be for such term or any
64 extensions thereof and upon such other terms and conditions as have
65 been approved by the municipality, including without limitation the
66 power to bind itself to appropriate funds as necessary to meet rent and
67 other obligations as provided in any such lease;

68 (B) Provide for the proper administration of gifts, grants, bequests
69 and devises and meet such terms or conditions as are prescribed by the
70 grantor or donor and accepted by the municipality.

71 Sec. 4. Section 7-600 of the general statutes is repealed and the
72 following is substituted in lieu thereof (*Effective from passage*):

73 (a) Any municipality may by resolution of its legislative body
74 establish neighborhood revitalization zones, in one or more
75 neighborhoods, for the development by neighborhood groups of a
76 collaborative process for federal, state and local governments to
77 revitalize neighborhoods where there is a significant number of
78 deteriorated property and property that has been foreclosed, is

79 abandoned, blighted or is substandard or poses a hazard to public
80 safety. The resolution shall (1) provide that the chief executive official
81 facilitate the planning process for neighborhood revitalization zones
82 by assigning municipal staff to make available information to
83 neighborhood groups and to modify municipal procedures to assist
84 neighborhood revitalization zones, and (2) establish a process for
85 determination of the boundaries of neighborhood revitalization zones.

86 (b) Public buildings in the municipality shall be available for
87 neighborhood groups to meet for neighborhood revitalization
88 purposes as determined by the chief executive official.

89 (c) As used in this section "deteriorated property" means property in
90 serious noncompliance with state and local health and safety codes
91 and regulations. Such deteriorated property includes, but is not limited
92 to:

93 (1) Any dwelling that, because it is dilapidated, unsanitary, unsafe,
94 vermin-infested or lacking in the facilities and equipment required by
95 the housing code of the municipality, is unfit for human habitation;

96 (2) Any structure that is a fire hazard, or is otherwise dangerous to
97 the safety of persons or property;

98 (3) Any structure from which the utilities, plumbing, heating,
99 sewerage or other facilities have been disconnected, destroyed,
100 removed or rendered ineffective so that the property is unfit for its
101 intended use; and

102 (4) Any vacant or unimproved lot or parcel of land in a
103 predominantly developed neighborhood that, by reason of neglect or
104 lack of maintenance, has become a place for accumulation of trash and
105 debris, or a haven for rodents or other vermin.

106 Sec. 5. (NEW) (*Effective July 1, 2006*) (a) There is established an Office
107 of Property Rights Ombudsman which shall be within the Office of
108 Policy and Management for administrative purposes only. The Office
109 of Property Rights Ombudsman shall be under the direction of a

110 Property Rights Ombudsman who shall be appointed in accordance
111 with section 6 of this act.

112 (b) The Office of Property Rights Ombudsman shall:

113 (1) Develop and maintain expertise in, and understanding of, the
114 (A) provisions of the federal and state constitutions governing the
115 taking of private property and provisions of state law authorizing a
116 public agency to take private property, and (B) case law interpreting
117 such provisions;

118 (2) Assist public agencies in applying constitutional and statutory
119 provisions concerning eminent domain;

120 (3) At the request of a public agency, provide assistance in
121 analyzing actions that have potential eminent domain implications;

122 (4) Advise private property owners who have a legitimate potential
123 or actual claim against a public agency with the power of eminent
124 domain;

125 (5) Identify state or local governmental actions that have potential
126 eminent domain implications and, if appropriate, advise the
127 appropriate public agency about such implications;

128 (6) Provide information to private citizens, civic groups and other
129 interested parties about eminent domain law and their rights with
130 respect to eminent domain;

131 (7) If requested to do so by a private property owner: (A) Arbitrate
132 or arrange for the arbitration of disputes concerning the use of eminent
133 domain and related relocation assistance between private property
134 owners and public agencies, and (B) to the extent deemed feasible by
135 the Property Rights Ombudsman, mediate such disputes;

136 (8) Assist private property owners with respect to disputes
137 concerning the effect of municipal regulation of the use and occupancy
138 of real property, except that such assistance shall not include

139 mediation or arbitration unless requested under section 7 of this act;
140 and

141 (9) Recommend to the General Assembly changes that, in the
142 opinion of the Property Rights Ombudsman, should be made to the
143 general statutes related to eminent domain.

144 (c) For purposes of this section and sections 6 to 13, inclusive, of this
145 act, "public agency" means a public agency, as defined in section 1-200
146 of the general statutes, with the power to acquire property through
147 eminent domain and includes an entity authorized to acquire property
148 through eminent domain on behalf of the public agency.

149 Sec. 6. (NEW) (*Effective July 1, 2006*) The Property Rights
150 Ombudsman shall be appointed by the Governor in accordance with
151 sections 4-5 to 4-8, inclusive, of the general statutes, as amended by
152 this act. The Property Rights Ombudsman shall be an elector of the
153 state with expertise and experience in the field of real estate sales, real
154 estate appraisals or land use regulation. The Property Rights
155 Ombudsman shall not have been employed or served in an official
156 capacity with respect to any eminent domain procedure for a period of
157 one year prior to appointment.

158 Sec. 7. (NEW) (*Effective July 1, 2006*) (a) (1) The Property Rights
159 Ombudsman shall adopt regulations, in accordance with chapter 54 of
160 the general statutes, to establish an arbitration procedure for the
161 settlement of disputes between private property owners and public
162 agencies concerning (A) the use of eminent domain, and (B) relocation
163 assistance.

164 (2) The Property Rights Ombudsman may adopt regulations, in
165 accordance with chapter 54 of the general statutes, to establish a
166 mediation procedure for requests filed pursuant to this section.

167 (b) Any private property owner may file a request with the Property
168 Rights Ombudsman to have an eminent domain or relocation
169 assistance dispute between the private property owner and a public

170 agency heard before an arbitrator or arbitration panel. The private
171 property owner shall file the request, in writing, on forms prescribed
172 by the Property Rights Ombudsman or by calling a toll-free telephone
173 number that the Property Rights Ombudsman shall establish for such
174 purpose. Not later than fifteen days after filing the initial request for
175 arbitration, the private property owner shall file, on forms prescribed
176 by the Property Rights Ombudsman, any information the Property
177 Rights Ombudsman requires to determine whether to grant the
178 request, except that the Property Rights Ombudsman may grant an
179 extension of time for filing such information.

180 (c) (1) Not later than five days after receiving the request for
181 arbitration and information pursuant to subsection (b) of this section,
182 the Property Rights Ombudsman shall conduct an initial review of the
183 request and information and determine whether the dispute should be
184 accepted or rejected for arbitration based on criteria established by
185 regulations adopted under section 11 of this act. If the Property Rights
186 Ombudsman declines to arbitrate or appoint an arbitrator, the
187 Property Rights Ombudsman shall issue a written decision to the
188 property owner who filed the request specifying the reasons for the
189 decision.

190 (2) The Property Rights Ombudsman may appoint an individual
191 arbitrator or an arbitration panel to arbitrate a dispute, at the option of
192 the Property Rights Ombudsman or upon agreement of the parties,
193 when: (A) Any party objects to the Property Rights Ombudsman
194 serving as the arbitrator and agrees to pay for the services of the
195 arbitrator or panel; (B) the Property Rights Ombudsman declines to
196 arbitrate the dispute for a reason stated on the record and one or more
197 parties are willing to pay for the services of an arbitrator or panel; or
198 (C) the Property Rights Ombudsman finds it appropriate to appoint
199 another person or persons to arbitrate the dispute with no charge to
200 the parties for the services of the appointed arbitrator or panel. In
201 appointing an arbitrator or panel to arbitrate a dispute, the Property
202 Rights Ombudsman shall appoint arbitrators who are agreeable to the
203 parties and the Property Rights Ombudsman.

204 (3) Upon granting a request for arbitration, the Property Rights
205 Ombudsman shall notify each relevant public agency of the filing and
206 granting of the request for arbitration. The private property owner
207 who filed the request and each such public agency shall submit, in
208 writing, on a form prescribed by the Property Rights Ombudsman, any
209 information the Property Rights Ombudsman deems relevant to the
210 arbitration and resolution of the dispute.

211 (4) The Property Rights Ombudsman may, in his or her discretion,
212 mediate a dispute filed under this section if (A) the parties consent to
213 such mediation, and (B) regulations are adopted for such purpose
214 pursuant to subsection (a) of this section.

215 (5) The parties may agree in advance of arbitration that the
216 arbitration shall be binding and that no de novo trial by a court may
217 occur.

218 (6) The Property Rights Ombudsman shall investigate, gather and
219 organize all information necessary for a fair and timely resolution of
220 each dispute to be mediated or arbitrated under this section. The
221 Property Rights Ombudsman may issue subpoenas on behalf of the
222 Property Rights Ombudsman, arbitrator or arbitration panel to compel
223 the attendance of witnesses and the production of documents, papers
224 and records relevant to the dispute. The Property Rights Ombudsman
225 may forward a copy of all written testimony, including all
226 documentary evidence, to an independent technical expert or to any
227 person having a degree or other credentials from a nationally
228 recognized organization or institution attesting to relevant expertise,
229 for such person's review and to facilitate such person's assistance to the
230 Property Rights Ombudsman, arbitrator or arbitration panel. The
231 Property Rights Ombudsman, arbitrator or arbitration panel shall, not
232 later than sixty days after the date the request is filed under subsection
233 (b) of this section, render a decision based on the information and issue
234 written findings and reasons for the decision.

235 (d) Mediation or arbitration by or through the Office of Property
236 Rights Ombudsman shall not be required prior to bringing an action to

237 adjudicate any claim.

238 (e) The lack of mediation or arbitration by or through the Office of
239 Property Rights Ombudsman shall not constitute (1) a failure to obtain
240 a final decision under chapter 54 of the general statutes, or otherwise
241 exhaust available administrative remedies, or (2) a bar to any legal
242 action. Not more than thirty days after the issuance of a final decision
243 under this section, any party may submit the decision or any issue
244 upon which the decision is based to the Superior Court for de novo
245 review, unless otherwise agreed as provided in subdivision (5) of
246 subsection (c) of this section.

247 (f) Except as provided in section 13 of this act, the filing with the
248 Property Rights Ombudsman of a request for mediation or arbitration
249 of an eminent domain or relocation assistance matter shall not stay any
250 land use decision by a public agency.

251 (g) No employee of the Office of Property Rights Ombudsman may
252 be compelled to testify in a civil action with regard to the subject
253 matter of any dispute before the Office of Property Rights
254 Ombudsman.

255 (h) Evidence of a review by the Property Rights Ombudsman and
256 the opinions, writings, findings and decisions of the Property Rights
257 Ombudsman or any arbitrator or arbitration panel pursuant to this
258 section shall not be admissible as evidence in any action brought in
259 court with respect to the same dispute.

260 (i) The Property Rights Ombudsman may not represent a private
261 property owner or public agency in any dispute before a court or
262 public agency.

263 Sec. 8. (NEW) (*Effective July 1, 2006*) Each public agency shall comply
264 with reasonable requests of the Office of Property Rights Ombudsman
265 for information and assistance.

266 Sec. 9. (NEW) (*Effective July 1, 2006*) No employee in the Office of
267 Property Rights Ombudsman may:

268 (1) Be employed by, or hold a position on, any public agency other
269 than the Office of Property Rights Ombudsman;

270 (2) Receive or have the right to receive, directly or indirectly,
271 remuneration under a compensation arrangement with respect to an
272 eminent domain procedure; or

273 (3) Knowingly accept employment with a public agency for a period
274 of one year following termination of that person's services with the
275 Office of Property Rights Ombudsman.

276 Sec. 10. (NEW) (*Effective July 1, 2006*) (a) The Property Rights
277 Ombudsman may apply for and accept grants, gifts and bequests of
278 funds from other states, federal and interstate agencies and
279 independent authorities and private firms, individuals and
280 foundations, for the purpose of carrying out the responsibilities of the
281 Office of Property Rights Ombudsman.

282 (b) There is established, within the General Fund, a Property Rights
283 Ombudsman account that shall be a separate nonlapsing account. Any
284 funds received under this section shall, upon deposit in the General
285 Fund, be credited to said account and may be used by the Office of
286 Property Rights Ombudsman in the performance of its duties.

287 Sec. 11. (NEW) (*Effective July 1, 2006*) The Property Rights
288 Ombudsman shall adopt regulations, in accordance with chapter 54 of
289 the general statutes, to implement sections 5 to 10, inclusive, of this act.
290 Such regulations shall establish criteria to be used by the Property
291 Rights Ombudsman in determining whether to accept or reject a
292 request for arbitration filed pursuant to section 7 of this act.

293 Sec. 12. (NEW) (*Effective July 1, 2006*) Each public agency seeking to
294 acquire property by eminent domain shall: (1) Before initiating the
295 eminent domain action, make a reasonable effort to negotiate with the
296 property owner for the purchase of the property; and (2) as early in the
297 negotiation process for the real property as practicable, but not later
298 than fourteen days before the filing of an eminent domain action,

299 unless the court for good cause allows a shorter period before filing:
300 (A) Advise the property owner of available mediation and arbitration
301 under section 7 of this act, including the name, address and telephone
302 number of the Property Rights Ombudsman appointed pursuant to
303 section 6 of this act, and (B) provide the property owner with a written
304 statement explaining that oral representations or promises made
305 during the negotiation process are not binding on the public agency
306 seeking to acquire the property by eminent domain. The information
307 provided under subparagraphs (A) and (B) of this subdivision shall be
308 in such form as the Property Rights Ombudsman prescribes.

309 Sec. 13. (NEW) (*Effective July 1, 2006*) (a) In any dispute between a
310 public agency seeking to acquire real property by eminent domain and
311 a private property owner, the private property owner may submit the
312 dispute for mediation or arbitration to the Property Rights
313 Ombudsman under sections 5 to 11, inclusive, of this act.

314 (b) Except as provided in subsection (c) of this section, an action
315 submitted to the Property Rights Ombudsman under this section shall
316 not bar or stay any action for occupancy or possession of property
317 which is the subject of the dispute.

318 (c) The Property Rights Ombudsman or an arbitrator, acting at the
319 request of the private property owner under section 7 of this act, shall
320 have standing in an action brought in any court concerning the real
321 property that is the subject of the dispute and may file with such court
322 a motion to stay the action during the pendency of the mediation or
323 arbitration. The Property Rights Ombudsman or arbitrator may not file
324 such a motion unless the ombudsman or arbitrator certifies at the time
325 of filing the motion that a stay is reasonably necessary to reach a
326 resolution of the case through mediation or arbitration. If a stay is
327 granted and the order granting the stay does not specify when the stay
328 terminates, the ombudsman or arbitrator shall file with the court a
329 motion to terminate the stay not more than thirty days after: (1) The
330 resolution of the dispute through mediation; (2) the issuance of a final
331 arbitration decision; or (3) a decision by the Property Rights

332 Ombudsman not to grant a request for mediation or arbitration.

333 (d) The private property owner or displaced person may request
334 that the ombudsman or arbitrator authorize an additional appraisal. If
335 the ombudsman or arbitrator determines that an additional appraisal
336 is reasonably necessary to reach a resolution of the case, the
337 ombudsman or arbitrator may: (1) Arrange for an additional appraisal
338 of the property prepared by an independent appraiser; and (2) require
339 the public agency proposing to acquire the property to pay the costs of
340 the first additional appraisal.

341 Sec. 14. Section 4-5 of the general statutes is repealed and the
342 following is substituted in lieu thereof (*Effective July 1, 2006*):

343 As used in sections 4-6, 4-7, as amended, and 4-8, the term
344 "department head" means Secretary of the Office of Policy and
345 Management, Commissioner of Administrative Services,
346 Commissioner of Revenue Services, Banking Commissioner,
347 Commissioner of Children and Families, Commissioner of Consumer
348 Protection, Commissioner of Correction, Commissioner of Economic
349 and Community Development, State Board of Education,
350 Commissioner of Emergency Management and Homeland Security,
351 Commissioner of Environmental Protection, Commissioner of
352 Agriculture, Commissioner of Public Health, Insurance Commissioner,
353 Labor Commissioner, Liquor Control Commission, Commissioner of
354 Mental Health and Addiction Services, Commissioner of Public Safety,
355 Commissioner of Social Services, Commissioner of Mental Retardation,
356 Commissioner of Motor Vehicles, Commissioner of Transportation,
357 Commissioner of Public Works, Commissioner of Veterans' Affairs,
358 Commissioner of Health Care Access, Chief Information Officer, the
359 chairperson of the Public Utilities Control Authority, the executive
360 director of the Board of Education and Services for the Blind, [and] the
361 executive director of the Connecticut Commission on Culture and
362 Tourism and the Property Rights Ombudsman.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	8-193
Sec. 2	<i>from passage</i>	32-224(g)
Sec. 3	<i>from passage</i>	7-148(c)(3)
Sec. 4	<i>from passage</i>	7-600
Sec. 5	<i>July 1, 2006</i>	New section
Sec. 6	<i>July 1, 2006</i>	New section
Sec. 7	<i>July 1, 2006</i>	New section
Sec. 8	<i>July 1, 2006</i>	New section
Sec. 9	<i>July 1, 2006</i>	New section
Sec. 10	<i>July 1, 2006</i>	New section
Sec. 11	<i>July 1, 2006</i>	New section
Sec. 12	<i>July 1, 2006</i>	New section
Sec. 13	<i>July 1, 2006</i>	New section
Sec. 14	<i>July 1, 2006</i>	4-5

JUD *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 07 \$	FY 08 \$
Various State Agencies	GF - Cost	Potential Minimal	Potential Minimal
Office of the Property Rights Ombudsman	GF - Cost	\$175,000 or greater	\$175,000 or greater
Comptroller Misc. Accounts (Fringe Benefits)	GF - Cost	Potential	Potential

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 07 \$	FY 08 \$
All Municipalities	Cost	Potential Minimal	Potential Minimal

Explanation

Office of Property Rights Ombudsman

The bill establishes the Office of Property Rights Ombudsman, within the Office of Policy and Management, for administrative purposes only, and appoints the Property Rights Ombudsman and enumerates his qualifications and duties. It is anticipated that the office would require \$125,000 to fund the ombudsman’s position¹. Additionally, the office will require at least \$50,000 in Other Expenses to maintain a toll free number, prescribe and distribute forms, issue

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The estimated first year fringe benefit rate as a percentage of payroll is 23.6%, effective July 1, 2005. The first year fringe benefit costs for new positions do not include pension costs. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System (SERS). The SERS 2005-06 fringe benefit rate is 34.7%, which when combined with the non pension fringe benefit rate would total 58.3%.

subpoenas and other administrative functions. The bill permits the Ombudsman to hire additional staff which will result in additional costs of \$50,000 - \$350,000; such costs are contingent on the needs of the office as determined by the Ombudsman. It is anticipated that the Office of Property Rights Ombudsman will require significant resources to provide an arbitration procedure and appoint another arbitrator in certain circumstances.

The bill permits the Office of Property Rights Ombudsman to apply for and accept grants, gifts and bequests of funds from other states, federal and interstate agencies and independent authorities and private firms, individuals and foundations. Such funds, if any, shall be deposited in a separate non-lapsing account to be used by the Office of Property Rights Ombudsman to perform its duties. It is unknown whether any such funds will be received, thus it is assumed all costs related to the Office of Property Rights Ombudsman will be a cost to the General Fund. No funds for this purpose were included in sHB 5007, the budget bill, as favorably reported by the Appropriations Committee on March 30, 2006.

Additional Changes

Any additional procedures that could be required of a municipality or an agency before taking property by eminent domain are anticipated to result in a minimal fiscal impact on those that choose to take property.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**HB 5810*****AN ACT LIMITING THE USE OF EMINENT DOMAIN BY MUNICIPALITIES AND MUNICIPAL DEVELOPMENT AGENCIES AND ESTABLISHING AN OFFICE OF PROPERTY RIGHTS OMBUDSMAN.*****SUMMARY:**

This bill eliminates the use of eminent domain by (1) a municipality or development agency to acquire property within a municipal development project area and (2) an implementing agency to acquire property in the development plan under the Manufacturing Assistance Act. Under current law, these agencies can use eminent domain with the approval of the municipality's legislative body.

The bill creates an Office of Property Rights Ombudsman to develop expertise in the law regarding taking private property, assist public agencies, advise property owners, identify government actions with potential eminent domain implications and advise agencies, inform the public, mediate or conduct or arrange for arbitration in disputes if requested by a private property owner, and recommend changes in eminent domain laws to the legislature.

The bill allows a private property owner to request that the ombudsman arbitrate an eminent domain or relocation assistance dispute between the owner and a public agency. The bill sets up procedures for these requests, including requirements for investigations and issuing decisions. It also allows the ombudsman to mediate a dispute if the parties agree and he has adopted regulations regarding mediations.

The bill requires a public agency to make a reasonable effort to negotiate with a property owner before starting an eminent domain

action and to provide the property owner with certain information before filing such an action, including information about the ombudsman.

The bill also makes two other changes related to eminent domain.

1. The municipal powers statute generally authorizes towns to acquire property for the purposes of the municipality and public uses or purposes. The bill eliminates the encouragement of private commercial development as one of the examples of a public use or purpose.
2. The bill specifies certain types of property that can be considered deteriorated property in the Neighborhood Revitalization Zone Act.

EFFECTIVE DATE: Upon passage, except for the provisions regarding the property rights ombudsman, which are effective July 1, 2006.

OFFICE OF PROPERTY RIGHTS OMBUDSMAN

The bill creates an Office of Property Rights Ombudsman, within the Office of Policy and Management for administrative purposes only. The office, headed by the property rights ombudsman, must:

1. develop and maintain expertise in and understanding of (a) federal and state constitutional provisions governing taking private property, (b) state laws authorizing taking private property, and (c) case law interpreting these provisions;
2. assist public agencies in applying constitutional and statutory eminent domain provisions;
3. assist public agencies, at their request, in analyzing actions with potential eminent domain implications;
4. advise private property owners who have a legitimate potential or actual claim against a public agency that has the power of

eminent domain;

5. identify state or local government actions that have potential eminent domain implications and advise the appropriate public agency about them, if appropriate;
6. provide information to private citizens, civic groups, and other interested parties about eminent domain law and their rights;
7. if requested by a private property owner, (a) arbitrate or arrange arbitration of disputes between private property owners and public agencies about the use of eminent domain and related relocation assistance and (b) mediate disputes as the ombudsman deems feasible;
8. assist private property owners with disputes about the effect of municipal regulation of use and occupancy of real property (this does not include mediation or arbitration unless requested and as provided by the bill); and
9. recommend to the legislature changes that the ombudsman believes should be made to the eminent domain laws.

The bill requires the ombudsman to adopt regulations to implement the bill's provisions. He must establish arbitration procedures and criteria for determining whether to accept or reject requests for arbitration. He may also adopt regulations for mediation procedures.

Ombudsman

Under the bill, the property rights ombudsman is appointed by the governor with the consent of either house of the General Assembly. The ombudsman is designated a department head and serves at the governor's pleasure for up to four years, unless reappointed. The ombudsman must be an elector with expertise and experience in real estate sales, real estate appraisals, or land use regulation. The ombudsman must not have been employed or served in an official capacity with respect to an eminent domain procedure within one year

of appointment.

Office Employees

The bill prohibits office employees from:

1. being employed or holding a position in any other public agency;
2. receiving or having the right to receive, directly or indirectly, remuneration under a compensation arrangement with respect to an eminent domain procedure; and
3. knowingly accepting employment with a public agency for one year after terminating services with the office.

Office Account in the General Fund

The bill allows the office to apply for and accept grants, gifts, and bequests of funds from states, federal and interstate agencies and independent authorities, private firms, individuals, and foundations in order to carry out its responsibilities. It creates a property rights ombudsman account as a separate nonlapsing account in the General Fund and any funds received are credited to that account for the office's use in performing its duties.

PUBLIC AGENCIES

Many of the bill's provisions involve actions by public agencies. The bill defines a public agency as one of the following entities, if it has eminent domain power, or an entity authorized to use eminent domain on its behalf:

1. an executive, administrative, or legislative office of the state or a political subdivision;
2. a state or town agency;
3. a department, institution, bureau, board, commission, authority, or official of the state, municipality, school district, regional district, other district, or other political subdivision;

4. a committee of or created by one of the entities listed above;
5. any judicial office, official, or body, or committee with respect to their administrative functions;
6. any person to the extent deemed the functional equivalent of a public agency pursuant to law; and
7. certain agencies designated by a municipality under the economic development and manufacturing assistance act.

Negotiations

The bill requires a public agency seeking to acquire property by eminent domain to make a reasonable effort to negotiate with the property owner to buy the property before starting an eminent domain action.

The agency must also provide the property owner with (1) information on the bill's mediation and arbitration provisions including the ombudsman's name, address, and phone number and (2) a written statement explaining that oral representations or promises during negotiations are not binding on the agency. This information must be on a form prescribed by the ombudsman and given to the owner as early as practicable in the negotiation process but at least 14 days before filing the eminent domain action (unless the court allows a shorter period for good cause).

Cooperation with Ombudsman

The bill requires public agencies to comply with the ombudsman's reasonable requests for information and assistance.

ARBITRATION AND MEDIATION BY THE OMBUDSMAN

The bill allows a private property owner to file a request with the ombudsman to have an eminent domain or relocation assistance dispute between the owner and a public agency heard before an arbitrator or arbitration panel. The owner must make the request (1) in writing on forms prescribed by the ombudsman or (2) by calling a toll-

free number the ombudsman must establish. Within 15 days of filing the request, the owner must file any information the ombudsman requires to determine whether to grant the request. The ombudsman can extend the time for filing.

Within five days of receiving the request and required information, the ombudsman must initially review it to decide whether to accept or reject the dispute based on criteria the ombudsman sets by regulation. If the ombudsman denies the request, he must issue a written decision to the owner specifying the reasons for the denial.

After granting a request, the ombudsman must notify relevant public agencies of the filing and that he granted the request for arbitration. The private property owner and each agency must submit in writing, on a prescribed form, any information the ombudsman deems relevant to the arbitration and resolution of the dispute.

The bill allows the parties to agree in advance that arbitration is binding and, if they do, they cannot have a new trial in court.

The ombudsman has discretion to mediate the dispute if (1) the parties consent to it and (2) regulations are adopted for mediation.

Appointing an Arbitrator

The bill allows the ombudsman to appoint an arbitrator or an arbitration panel for a dispute, at his option or on agreement of the parties, when:

1. a party objects to the ombudsman serving as arbitrator and agrees to pay for an arbitrator or a panel,
2. the ombudsman declines to arbitrate the dispute for a reason stated on the record and one or more parties are willing to pay for the services of an arbitrator or panel, or
3. the ombudsman finds it appropriate to appoint another person to arbitrate the dispute with no charge to the parties.

An appointment must be agreeable to the parties and the ombudsman.

Investigations

The bill requires the ombudsman to investigate and gather information necessary for a fair and timely resolution of disputes to be mediated or arbitrated. He can issue subpoenas on his own behalf or for the arbitrator or panel (1) to compel witnesses to attend and (2) for production of relevant documents, papers, and records. The ombudsman can forward a copy of written testimony, including documentary evidence, to an independent technical expert. He can also send these documents to any person with a degree or credentials from a nationally recognized organization or institution attesting to relevant expertise for their review and to facilitate the expert's assistance to the ombudsman, arbitrator, or panel.

Motion to Stay Court Action

Under the bill, an action submitted to the ombudsman for mediation or arbitration does not bar or stay any action for occupancy or possession of property that is the subject of an eminent domain dispute. But it allows the ombudsman or an arbitrator acting at the property owner's request to have standing in a court action to file a motion for a stay while the mediation or arbitration is pending if he certifies it is reasonably necessary to resolve the case.

If the court grants a stay but does not specify when it terminates, the ombudsman or arbitrator must file a motion to terminate the stay within 30 days after (1) resolving the dispute through mediation, (2) issuing a final arbitration decision, or (3) denying the request for mediation or arbitration.

Decisions and Court Actions

Within 60 days of the owner's request for arbitration, the bill requires the ombudsman, arbitrator, or panel to render a decision on the information including written findings and reasons. Within 30 days of a final decision, a party can submit the decision or any issue

from it to the Superior Court for a new review of the evidence unless the parties agreed in advance to binding arbitration.

The bill prohibits office employees from being compelled to testify in a civil action on the subject matter of any dispute that was before the ombudsman's office. Evidence of review by the ombudsman and any of his opinions, writings, findings, and decisions or those of an arbitrator or panel are not admissible as evidence in a court action on the same dispute.

The bill prohibits the ombudsman from representing a private property owner or public agency in any dispute in a court or agency.

The bill provides that mediation or arbitration is not required before bringing an action to adjudicate a claim and the lack of mediation or arbitration does not bar legal action or constitute a failure to obtain a final administrative decision or exhaust administrative remedies.

Additional Appraisals

The bill allows the private property owner or displaced person to ask the ombudsman or arbitrator to authorize an additional appraisal. If it is reasonably necessary to resolve the case, the ombudsman or arbitrator can (1) arrange for an additional appraisal by an independent appraiser and (2) require the agency to pay the costs of the first additional appraisal.

NEIGHBORHOOD REVITALIZATION ZONES

By law, towns can set up a process to allow groups of residents, property owners, and business organizations to develop strategic plans and work with all levels of government to revive a neighborhood designated as a "revitalization zone." These neighborhoods must have a significant number of properties that are deteriorated, foreclosed, abandoned, blighted, substandard, or public safety hazards.

Under current law, a deteriorated property is one that is in serious noncompliance with state and local health and safety codes and

regulations. The bill provides that a “deteriorated property” includes a:

1. dwelling that is unfit for human habitation because it is dilapidated, unsanitary, unsafe, vermin-infested, or lacks facilities and equipment required by the municipal housing code;
2. structure that is a fire hazard or otherwise dangerous to the safety of people or property;
3. structure unfit for its intended use because of disconnected, destroyed, removed, or ineffective utilities, plumbing, heating, sewerage, or other facilities; or
4. vacant or unimproved lot or parcel in a predominantly developed neighborhood that by neglect or lack of maintenance is a place where trash and debris accumulate or is a haven for rodents or vermin.

By law, unchanged by the bill, towns can take property located in a revitalization zone by eminent domain.

BACKGROUND

Uniform Relocation Assistance Acts

There are separate state and federal relocation assistance laws. The federal law applies to a state project if federal funding is involved. The acts provide similar benefits, for example, moving costs and, for specified periods, a payment towards the higher rent or mortgage that a relocated person must pay following relocation.

Related Bills

SB 34 (File 260), makes a number of changes regarding eminent domain including (1) distinguishing takings for economic development from other takings, and imposing a higher procedural standard on the former; (2) allowing aggrieved parties to appeal a legislative body’s approval of development or redevelopment plans to

the courts; and (3) requiring the taking agency to show that public interests clearly outweigh the interests of the individual property owner and cannot be protected by reasonable changes to the affected area.

Among other things, sHB 5038 (File 303) limits the extent to which towns can take property under redevelopment plans, specifies that compensation may include other factors besides fair market value, and gives property owners more time to appeal an agency's statement of compensation. It also creates a property rights ombudsman office.

SB 665, reported favorably by the Judiciary Committee, makes a number of changes regarding eminent domain including:

1. prohibiting use of eminent domain in municipal development projects solely to increase local tax revenue,
2. requiring property taken by eminent domain for a municipal development project to be first offered to the person it was acquired from if it is later offered for sale,
3. making it an unfair trade practice for a person to represent in negotiations that he has the power to use eminent domain if he does not have that power,
4. adding provisions on appraisals and requiring compensation of at least 125% of fair market value for takings under the redevelopment chapter (which can apply to other takings that reference these provisions), and
5. increasing maximum payments authorized for relocation assistance.

Related Case

In *Kelo v. City of New London*, the U.S. Supreme Court ruled that New London could take privately owned properties for private development under its economic revitalization plan (125 S.Ct. 2655, June 23, 2005). The Court held that since the plan served a public

purpose, it satisfied the U.S. Constitution's public use requirement, which bans government from taking land for public use without just compensation. Relying on prior decisions, the Court interpreted public use as being the equivalent of "public purpose."

The decision upheld the Connecticut Supreme Court's 2004 *Kelo* decision (268 Conn. 1), which found that New London's actions did not violate either the Connecticut or the U.S. constitutional bans against taking property for public uses without just compensation.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 38 Nay 0 (03/24/2006)