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LAW/KR

P.L.2013, CHAPTER 159, *approved September 6, 2013*
Assembly, No. 3615 (*Second Reprint*)

- 1 **AN ACT** concerning procedures and powers under the “Local
2 Redevelopment and Housing Law” and amending P.L.1992,
3 c.79.
4
- 5 **WHEREAS**, Article VIII, Section III, paragraph 1 of the New Jersey
6 Constitution empowers the Legislature to authorize municipalities
7 to clear, replan, develop, and redevelop blighted areas; and
- 8 **WHEREAS**, The Legislature has authorized municipalities to undertake
9 programs to redevelop blighted areas; and
- 10 **WHEREAS**, Municipalities have used these programs to arrest and
11 reverse blighted conditions to promote sound planning, revitalize
12 tax bases, and improve the public safety, health, and welfare of
13 their communities; and
- 14 **WHEREAS**, In exercising their responsibilities and implementing
15 redevelopment programs municipalities have exercised the power
16 of eminent domain; and
- 17 **WHEREAS**, The 2005 United States Supreme Court decision in *Kelo v.*
18 *City of New London*, 545 U.S. 469 (2005), heightened public
19 concern with the use of eminent domain to implement municipal
20 redevelopment activities; and
- 21 **WHEREAS**, The New Jersey Supreme Court in *Gallenthin Realty*
22 *Development, Inc. v. Borough of Paulsboro*, 191 N.J. 344 (2007),
23 clarified one of the criterion for designating redevelopment areas in
24 New Jersey and emphasized that the use of eminent domain cannot
25 be justified to acquire property unless it is blighted, rather than
26 merely not being put to its optimal use; and
- 27 **WHEREAS**, The Appellate Division of the Superior Court in *Harrison*
28 *Redevelopment Agency v. DeRose*, 398 N.J. Super. 361 (App. Div.
29 2008) addressed a due process concern with the notice provision
30 under the Local Redevelopment and Housing Law, in cases where
31 eminent domain was used long after the property sought to be
32 acquired was designated as blighted and property owners were
33 precluded from challenging such designation in defense of the
34 condemnation of their properties; and
- 35 **WHEREAS**, The "Local Redevelopment and Housing Law" should
36 appropriately be amended to be consistent with these judicial
37 holdings and to address some of the concerns raised with respect to
38 the use of eminent domain in the implementation of redevelopment
39 programs; and
- 40 **WHEREAS**, Redevelopment remains a valid and important public
41 purpose and the implementation of redevelopment programs

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ACE committee amendments adopted March 7, 2013.

²Assembly floor amendments adopted April 29, 2013.

1 continues to be a vital tool for municipal officials that must be
2 maintained to allow them to continue to meet their governmental
3 responsibilities to prevent, arrest, and reverse deleterious property
4 conditions within their municipal borders; and

5 **WHEREAS**, The State of New Jersey is experiencing the deepest
6 economic recession since the Great Depression; and

7 **WHEREAS**, Municipalities should be encouraged to engage in
8 economic development initiatives by promoting and facilitating
9 such efforts to create local economic stimulus and job creation
10 through the tools and incentives available under the “Local
11 Redevelopment and Housing Law;” and

12 **WHEREAS**, Municipalities should be provided the opportunity to
13 pursue such programs without the use of eminent domain ²【, where
14 possible, and thereby provide assurance to property owners they
15 will not be subject to eminent domain, as well as provide repose for
16 municipalities who can implement redevelopment programs
17 without resorting to eminent domain】²; ²and

18 **WHEREAS**, It is in the public interest to establish certainty and repose
19 with respect to the designation of redevelopment areas, the power
20 of eminent domain, and challenges thereto;² now, therefore,

21
22 **BE IT ENACTED** by the Senate and General Assembly of the State
23 of New Jersey:

24
25 1. Section 5 of P.L.1992, c.79 (40A:12A-5) is amended to read
26 as follows:

27 5. A delineated area may be determined to be in need of
28 redevelopment if, after investigation, notice and hearing as provided
29 in section 6 of P.L.1992, c.79 (C.40A:12A-6), the governing body
30 of the municipality by resolution concludes that within the
31 delineated area any of the following conditions is found:

32 a. The generality of buildings are substandard, unsafe,
33 unsanitary, dilapidated, or obsolescent, or possess any of such
34 characteristics, or are so lacking in light, air, or space, as to be
35 conducive to unwholesome living or working conditions.

36 b. The discontinuance of the use of buildings previously used
37 for commercial, manufacturing, or industrial purposes; the
38 abandonment of such buildings; or the same being allowed to fall
39 into so great a state of disrepair as to be untenable.

40 c. Land that is owned by the municipality, the county, a local
41 housing authority, redevelopment agency or redevelopment entity,
42 or unimproved vacant land that has remained so for a period of ten
43 years prior to adoption of the resolution, and that by reason of its
44 location, remoteness, lack of means of access to developed sections
45 or portions of the municipality, or topography, or nature of the soil,
46 is not likely to be developed through the instrumentality of private
47 capital.

- 1 d. Areas with buildings or improvements which, by reason of
2 dilapidation, obsolescence, overcrowding, faulty arrangement or
3 design, lack of ventilation, light and sanitary facilities, excessive
4 land coverage, deleterious land use or obsolete layout, or any
5 combination of these or other factors, are detrimental to the safety,
6 health, morals, or welfare of the community.
- 7 e. A growing lack or total lack of proper utilization of areas
8 caused by the condition of the title, diverse ownership of the real
9 **【property】** properties therein or other similar conditions which
10 impede land assemblage or discourage the undertaking of
11 improvements, resulting in a stagnant **【or】** and **【not fully**
12 **productive】** unproductive condition of land potentially useful and
13 valuable for contributing to and serving the public health, safety
14 and welfare, which condition is presumed to be having a negative
15 social or economic impact or otherwise being detrimental to the
16 safety, health, morals, or welfare of the surrounding area or the
17 community in general.
- 18 f. Areas, in excess of five contiguous acres, whereon buildings
19 or improvements have been destroyed, consumed by fire,
20 demolished or altered by the action of storm, fire, cyclone, tornado,
21 earthquake or other casualty in such a way that the aggregate
22 assessed value of the area has been materially depreciated.
- 23 g. In any municipality in which an enterprise zone has been
24 designated pursuant to the "New Jersey Urban Enterprise Zones
25 Act," P.L.1983, c.303 (C.52:27H-60 et seq.) the execution of the
26 actions prescribed in that act for the adoption by the municipality
27 and approval by the New Jersey Urban Enterprise Zone Authority
28 of the zone development plan for the area of the enterprise zone
29 shall be considered sufficient for the determination that the area is
30 in need of redevelopment pursuant to sections 5 and 6 of P.L.1992,
31 c.79 (C.40A:12A-5 and 40A:12A-6) for the purpose of granting tax
32 exemptions within the enterprise zone district pursuant to the
33 provisions of P.L.1991, c.431 (C.40A:20-1 et seq.) or the adoption
34 of a tax abatement and exemption ordinance pursuant to the
35 provisions of P.L.1991, c.441 (C.40A:21-1 et seq.). The
36 municipality shall not utilize any other redevelopment powers
37 within the urban enterprise zone unless the municipal governing
38 body and planning board have also taken the actions and fulfilled
39 the requirements prescribed in P.L.1992, c.79 (C.40A:12A-1 et al.)
40 for determining that the area is in need of redevelopment or an area
41 in need of rehabilitation and the municipal governing body has
42 adopted a redevelopment plan ordinance including the area of the
43 enterprise zone.
- 44 h. The designation of the delineated area is consistent with
45 smart growth planning principles adopted pursuant to law or
46 regulation.
- 47 (cf: P.L.2003, c.125, s.3)

1 2. Section 6 of P.L.1992, c.79 (C.40A:12A-6) is amended to
2 read as follows:

3 6. a. No area of a municipality shall be determined a
4 redevelopment area unless the governing body of the municipality
5 shall, by resolution, authorize the planning board to undertake a
6 preliminary investigation to determine whether the proposed area is
7 a redevelopment area according to the criteria set forth in section 5
8 of P.L.1992, c.79 (C.40A:12A-5). Such determination shall be
9 made after public notice and public hearing as provided in
10 subsection b. of this section. The governing body of a municipality
11 shall assign the conduct of the investigation and hearing to the
12 planning board of the municipality. The resolution authorizing the
13 planning board to undertake a preliminary investigation shall state
14 whether the redevelopment area determination shall authorize the
15 municipality to use all those powers provided by the Legislature for
16 use in a redevelopment area other than the use of eminent domain
17 (hereinafter referred to as a "Non-Condensation Redevelopment
18 Area") or whether the redevelopment area determination shall
19 authorize the municipality to use all those powers provided by the
20 Legislature for use in a redevelopment area, including the power of
21 eminent domain (hereinafter referred to as a "Condensation
22 Redevelopment Area").

23 b. (1) Before proceeding to a public hearing on the matter, the
24 planning board shall prepare a map showing the boundaries of the
25 proposed redevelopment area and the location of the various parcels
26 of property included therein. There shall be appended to the map a
27 statement setting forth the basis for the investigation.

28 (2) The planning board shall specify a date for and give notice
29 of a hearing for the purpose of hearing persons who are interested in
30 or would be affected by a determination that the delineated area is a
31 redevelopment area.

32 (3) (a) The hearing notice shall set forth the general boundaries
33 of the area to be investigated and state that a map has been prepared
34 and can be inspected at the office of the municipal clerk.

35 (b) If the governing body resolution assigning the investigation
36 to the planning board, pursuant to subsection a. of this section,
37 stated that the redevelopment determination shall establish a Non-
38 Condensation Redevelopment Area, the notice of the hearing shall
39 specifically state that a redevelopment area determination shall not
40 authorize the municipality to exercise the power of eminent domain
41 to acquire any property in the delineated area.

42 (c) If the resolution assigning the investigation to the planning
43 board, pursuant to subsection a. of this section, stated that the
44 redevelopment determination shall establish a Condensation
45 Redevelopment Area, the notice of the hearing shall specifically
46 state that a redevelopment area determination shall authorize the
47 municipality to exercise the power of eminent domain to acquire
48 property in the delineated area.

1 (d) A copy of the notice shall be published in a newspaper of
2 general circulation in the municipality once each week for two
3 consecutive weeks, and the last publication shall be not less than ten
4 days prior to the date set for the hearing. A copy of the notice shall
5 be mailed at least ten days prior to the date set for the hearing to the
6 last owner, if any, of each parcel of property within the area
7 according to the assessment records of the municipality. A notice
8 shall also be sent to all persons at their last known address, if any,
9 whose names are noted on the assessment records as claimants of an
10 interest in any such parcel. The assessor of the municipality shall
11 make a notation upon the records when requested to do so by any
12 person claiming to have an interest in any parcel of property in the
13 municipality. The notice shall be published and mailed by the
14 municipal clerk, or by such clerk or official as the planning board
15 shall otherwise designate. Failure to mail any such notice shall not
16 invalidate the investigation or determination thereon.

17 (4) At the hearing, which may be adjourned from time to time,
18 the planning board shall hear all persons who are interested in or
19 would be affected by a determination that the delineated area is a
20 redevelopment area. All objections to such a determination and
21 evidence in support of those objections, given orally or in writing,
22 shall be received and considered and made part of the public record.

23 (5) (a) After completing its hearing on this matter, the planning
24 board shall recommend that the delineated area, or any part thereof,
25 be determined, or not be determined, by the municipal governing
26 body to be a redevelopment area.

27 (b) After receiving the recommendation of the planning board,
28 the municipal governing body may adopt a resolution determining
29 that the delineated area, or any part thereof, is a redevelopment
30 area.

31 (c) Upon the adoption of a resolution, the clerk of the
32 municipality shall, forthwith, transmit a copy of the resolution to
33 the Commissioner of Community Affairs for review. If the area in
34 need of redevelopment is not situated in an area in which
35 development or redevelopment is to be encouraged pursuant to any
36 State law or regulation promulgated pursuant thereto, the
37 determination shall not take effect without first receiving the review
38 and the approval of the commissioner. If the commissioner does
39 not issue an approval or disapproval within 30 calendar days of
40 transmittal by the clerk, the determination shall be deemed to be
41 approved. If the area in need of redevelopment is situated in an
42 area in which development or redevelopment is to be encouraged
43 pursuant to any State law or regulation promulgated pursuant
44 thereto, then the determination shall take effect after the clerk has
45 transmitted a copy of the resolution to the commissioner. The
46 determination, if supported by substantial evidence and, if required,
47 approved by the commissioner, shall be binding and conclusive
48 upon all persons affected by the determination.

1 (d) Notice of the determination shall be served, within 10 days
2 after the determination, upon all record owners of property located
3 within the delineated area, those whose names are listed on the tax
4 assessor's records, and upon each person who filed a written
5 objection thereto and stated, in or upon the written submission, an
6 address to which notice of determination may be sent.

7 (e) If the governing body resolution assigning the investigation
8 to the planning board, pursuant to subsection a. of this section,
9 stated that the redevelopment determination shall establish a
10 Condemnation Redevelopment Area, the notice of the determination
11 required pursuant to subparagraph (d) of this paragraph shall
12 indicate that:

13 (i) the determination operates as a finding of public purpose and
14 authorizes the municipality to exercise the power of eminent
15 domain to acquire property in the redevelopment area, and

16 (ii) legal action to challenge the determination ²1.1² must be
17 commenced within 45 days of receipt of notice and that failure to
18 do so shall preclude an owner from later raising such challenge.

19 (f) No municipality ¹or redevelopment entity¹ shall ¹1.1¹ be
20 authorized to¹ exercise the power of eminent domain to acquire
21 property ¹for redevelopment purposes¹ within a ¹1.1¹ redevelopment
22 area on or after 90 days from the effective date of P.L. _____,
23 c. _____ (C. _____) (pending before the Legislature as this bill) unless
24 notice to property owners within the redevelopment area was
25 provided pursuant to subparagraph (e) of this paragraph. This
26 provision shall not apply to property located within an area
27 determined to be in need of redevelopment prior to the effective
28 date of P.L. _____, c. _____ (C. _____) (pending before the Legislature as this
29 bill)1.1 Non-Condemnation Redevelopment Area¹.

30 (g) If a municipal governing body has determined an area to be
31 a Non-Condemnation Redevelopment Area and is unable to acquire
32 property that is necessary for the redevelopment project, the
33 municipality may initiate and follow the process set forth in this
34 section to determine whether the area or property is a
35 Condemnation Redevelopment Area. Such determination shall be
36 based upon the then-existing conditions and not based upon the
37 condition of the area or property at the time of the prior Non-
38 Condemnation Redevelopment Area determination.

39 (h) A property owner who has received notice pursuant to this
40 section who does not file a legal challenge to the redevelopment
41 determination affecting his or her property within 45 days of receipt
42 of such notice shall thereafter be barred from filing such a challenge
43 and, in the case of a Condemnation Redevelopment Area and upon
44 compliance with the notice provisions of subparagraph (e) of this
45 paragraph, shall further be barred from asserting a challenge to the
46 redevelopment determination as a defense in any condemnation

1 proceeding to acquire the property ²unless the municipality and the
2 property owner agree otherwise².

3 (6) **【If written objections were filed in connection with the**
4 **hearing the】** The municipality shall, for 45 days next following its
5 determination **【to which the objections were filed】**, take no further
6 action to acquire any property by condemnation within the
7 redevelopment area.

8 (7) If **【a】** any person **【who filed a written objection to a**
9 **determination by the municipality pursuant to this subsection】**
10 shall, within 45 days after the adoption by the municipality of the
11 determination **【to which the person objected】**, apply to the Superior
12 Court, the court may grant further review of the determination by
13 procedure in lieu of prerogative writ; and in any such action the
14 court may make any incidental order that it deems proper.

15 c. An area determined to be in need of redevelopment pursuant
16 to this section shall be deemed to be a "blighted area" for the
17 purposes of Article VIII, Section III, paragraph 1 of the
18 Constitution. If an area is determined to be a redevelopment area
19 and a redevelopment plan is adopted for that area in accordance
20 with the provisions of this act, the municipality is authorized to
21 utilize all those powers provided in section 8 of P.L.1992, c.79
22 (C.40A:12A-8), except that a municipality may not acquire any land
23 or building by condemnation pursuant to subsection c. of that
24 section unless the ¹land or building is located within (1) an area that
25 was determined to be in need of redevelopment prior to the
26 effective date of P.L. , c. (C.) (pending before the Legislature
27 as this bill), or (2) a Condemnation Redevelopment Area for which
28 the¹ municipality has complied with the provisions of subparagraph
29 (e) of paragraph (5) of subsection b. of this section.

30 (cf: P.L.2003, c.125, s.4)

31

32 3. Section 8 of P.L.1992, c.79 (C.40A:12A-8) is amended to
33 read as follows:

34 8. Upon the adoption of a redevelopment plan pursuant to
35 section 7 of P.L.1992, c.79 (C.40A:12A-7), the municipality or
36 redevelopment entity designated by the governing body may
37 proceed with the clearance, replanning, development and
38 redevelopment of the area designated in that plan. In order to carry
39 out and effectuate the purposes of this act and the terms of the
40 redevelopment plan, the municipality or designated redevelopment
41 entity may:

42 a. Undertake redevelopment projects, and for this purpose issue
43 bonds in accordance with the provisions of section 29 of P.L.1992,
44 c.79 (C.40A:12A-29).

45 b. Acquire property pursuant to subsection i. of section 22 of
46 P.L.1992, c.79 (C.40A:12A-22).

1 c. Acquire, by condemnation, any land or building which is
2 necessary for the redevelopment project, pursuant to the provisions
3 of the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et
4 seq.), provided ¹it has complied with the notice requirements in
5 subparagraph (e) of paragraph (5) of subsection b. of section 6 of
6 P.L.1992, c.79 (40A:12A-6)] that the land or building is located
7 within (1) an area that was determined to be in need of
8 redevelopment prior to the effective date of P.L. , c. (C.)
9 (pending before the Legislature as this bill), or (2) a Condemnation
10 Redevelopment Area¹.

11 d. Clear any area owned or acquired and install, construct or
12 reconstruct streets, facilities, utilities, and site improvements
13 essential to the preparation of sites for use in accordance with the
14 redevelopment plan.

15 e. Prepare or arrange by contract for the provision of
16 professional services and the preparation of plans by registered
17 architects, licensed professional engineers or planners, or other
18 consultants for the carrying out of redevelopment projects.

19 f. Arrange or contract with public agencies or redevelopers for
20 the planning, replanning, construction, or undertaking of any
21 project or redevelopment work, or any part thereof; negotiate and
22 collect revenue from a redeveloper to defray the costs of the
23 redevelopment entity, including where applicable the costs incurred
24 in conjunction with bonds, notes or other obligations issued by the
25 redevelopment entity, and to secure payment of such revenue; as
26 part of any such arrangement or contract, provide for extension of
27 credit, or making of loans, to redevelopers to finance any project or
28 redevelopment work, or upon a finding that the project or
29 redevelopment work would not be undertaken but for the provision
30 of financial assistance, or would not be undertaken in its intended
31 scope without the provision of financial assistance, provide as part
32 of an arrangement or contract for capital grants to redevelopers; and
33 arrange or contract with public agencies or redevelopers for the
34 opening, grading or closing of streets, roads, roadways, alleys, or
35 other places or for the furnishing of facilities or for the acquisition
36 by such agency of property options or property rights or for the
37 furnishing of property or services in connection with a
38 redevelopment area.

39 g. Except with regard to property subject to the requirements of
40 P.L.2008, c.65 (C.40A:5-14.2 et al.), lease or convey property or
41 improvements to any other party pursuant to this section, without
42 public bidding and at such prices and upon such terms as it deems
43 reasonable, provided that the lease or conveyance is made in
44 conjunction with a redevelopment plan, notwithstanding the
45 provisions of any law, rule, or regulation to the contrary.

46 h. Enter upon any building or property in any redevelopment
47 area in order to conduct investigations or make surveys, sounding or
48 test borings necessary to carry out the purposes of this act.

- 1 i. Arrange or contract with a public agency for the relocation,
2 pursuant to the "Relocation Assistance Law of 1967," P.L.1967,
3 c.79 (C.52:31B-1 et seq.) and the "Relocation Assistance Act,"
4 P.L.1971, c.362 (C.20:4-1 et seq.), of residents, industry or
5 commerce displaced from a redevelopment area.
- 6 j. Make, consistent with the redevelopment plan: (1) plans for
7 carrying out a program of voluntary repair and rehabilitation of
8 buildings and improvements; and (2) plans for the enforcement of
9 laws, codes, and regulations relating to the use and occupancy of
10 buildings and improvements, and to the compulsory repair,
11 rehabilitation, demolition, or removal of buildings and
12 improvements.
- 13 k. Request that the planning board recommend and governing
14 body designate particular areas as being in need of redevelopment
15 or rehabilitation in accordance with the provisions of this act and
16 make recommendations for the redevelopment or rehabilitation of
17 such areas.
- 18 l. Study the recommendations of the planning board or
19 governing body for redevelopment of the area.
- 20 m. Publish and disseminate information concerning any
21 redevelopment area, plan or project.
- 22 n. Do all things necessary or convenient to carry out its powers.
23 (cf: P.L.2008, c.65, s.8)
- 24
- 25 4. Section 14 of P.L.1992, c.79 (C.40A:12A-14) is amended to
26 read as follows:
- 27 14. a. A delineated area may be determined to be in need of
28 rehabilitation if the governing body of the municipality determines
29 by resolution that a program of rehabilitation, as defined in section
30 3 of P.L.1992, c.79 (C.40A:12A-3), may be expected to prevent
31 further deterioration and promote the overall development of the
32 community; and that there exist in that area any of the following
33 conditions such that (1) a significant portion of structures therein
34 are in a deteriorated or substandard condition [and]; (2) more than
35 half of the housing stock in the delineated area is at least 50 years
36 old; (3) there is a [continuing] pattern of vacancy, abandonment or
37 underutilization of properties in the area[, with]; (4) there is a
38 persistent arrearage of property tax payments [thereon or (2) more
39 than half of the housing stock in the delineated area is at least 50
40 years old,] on properties in the area; (5) environmental
41 contamination is discouraging improvements and investment in
42 properties in the area; or (6) a majority of the water and sewer
43 infrastructure in the delineated area is at least 50 years old and is in
44 need of repair or substantial maintenance[; and (3) a program of
45 rehabilitation, as defined in section 3 of P.L.1992, c.79
46 (C.40A:12A-3), may be expected to prevent further deterioration
47 and promote the overall development of the community]. Where

1 warranted by consideration of the overall conditions and
2 requirements of the community, a finding of need for rehabilitation
3 may extend to the entire area of a municipality. Prior to adoption of
4 the resolution, the governing body shall submit it to the municipal
5 planning board for its review. Within 45 days of its receipt of the
6 proposed resolution, the municipal planning board shall submit its
7 recommendations regarding the proposed resolution, including any
8 modifications which it may recommend, to the governing body for
9 its consideration. Thereafter, or after the expiration of the 45 days
10 if the municipal planning board does not submit recommendations,
11 the governing body may adopt the resolution, with or without
12 modification. The resolution shall not become effective without the
13 approval of the commissioner pursuant to section 6 of P.L.1992,
14 c.79 (C.40A:12A-6), if otherwise required pursuant to that section.

15 b. A delineated area shall be deemed to have been determined
16 to be an area in need of rehabilitation in accordance with the
17 provisions of this act if it has heretofore been determined to be an
18 area in need of rehabilitation pursuant to P.L.1975, c.104 (C.54:4-
19 3.72 et seq.), P.L.1977, c.12 (C.54:4-3.95 et seq.) or P.L.1979,
20 c.233 (C.54:4-3.121 et al.).

21 c. (1) A municipality may adopt an ordinance declaring a
22 renovation housing project to be an area in need of rehabilitation for
23 the purposes of Article VIII, Section I, paragraph 6 of the New
24 Jersey Constitution if the need for renovation resulted from
25 conflagration.

26 (2) For the purposes of this subsection, "renovation housing
27 project" means any work or undertaking to provide a decent, safe,
28 and sanitary dwelling, to exclusively benefit a specific household,
29 by the renovation, reconstruction, or replacement of the household's
30 home on the same lot by either a charitable entity organized to
31 perform home renovations or by a for-profit builder using 75% or
32 more volunteer labor-hours to accomplish the construction for the
33 project. The undertaking may include any buildings; demolition,
34 clearance, or removal of buildings from land; equipment; facilities;
35 or other personal properties or interests therein which are necessary,
36 convenient, or desirable appurtenances of the undertaking.

37 d. (1) A municipality may adopt an ordinance declaring a
38 renovation housing project to be an area in need of rehabilitation for
39 the purposes of Article VIII, Section I, paragraph 6 of the New
40 Jersey Constitution if at least half of the number of people
41 occupying the dwelling as their primary residence qualify for a
42 federal income tax credit pursuant to 26 U.S.C. s.22 as a result of
43 being permanently and totally disabled and the improvements to be
44 made to the dwelling are made substantially to accommodate those
45 disabilities.

46 (2) For the purposes of this subsection, "renovation housing
47 project" means any work or undertaking to provide a decent, safe,
48 and sanitary single-family dwelling, to exclusively benefit at least

1 half of the number of people occupying a dwelling as their primary
 2 residence, by the renovation, reconstruction, or replacement of that
 3 dwelling on the same lot by either a charitable entity organized to
 4 perform home renovations or by a for-profit builder using 75% or
 5 more volunteer labor-hours to accomplish the construction for the
 6 project. The undertaking may include any buildings; demolition,
 7 clearance, or removal of buildings from land; equipment; facilities;
 8 or other personal properties or interests therein which are necessary,
 9 convenient, or desirable appurtenances of the undertaking.
 10 (cf: P.L.2007, c.91, s.1)

11

12 5. Section 15 of P.L.1992, c.79 (C.40A:12A-15) is amended to
 13 read as follows:

14 15. In accordance with the provisions of a redevelopment plan
 15 adopted pursuant to section 7 of P.L.1992, c.79 (C.40A:12A-7), a
 16 municipality or redevelopment entity may proceed with clearance,
 17 replanning, conservation, development, redevelopment and
 18 rehabilitation of an area in need of rehabilitation. With respect to a
 19 redevelopment project in an area in need of rehabilitation, the
 20 municipality or redevelopment entity, upon the adoption of a
 21 redevelopment plan for the area, may perform any of the actions set
 22 forth in section 8 of P.L.1992, c.79 (C.40A:12A-8), except that with
 23 respect to such a project the municipality shall not have the power
 24 to take or acquire private property by condemnation in furtherance
 25 of a redevelopment plan, unless: a. the area is within ¹(1)¹ an area
 26 determined to be in **【need of redevelopment pursuant to this act】**
 27 ¹need of redevelopment prior to the effective date of P.L. ,
 28 c. (C.) (pending before the Legislature as this bill), or (2)¹ a
 29 Condemnation Redevelopment Area and the municipality has
 30 complied with the notice requirements under subparagraph (e) of
 31 paragraph (5) of subsection b. of section 6 of P.L.1992, c.79
 32 (40A:12A-6); or b. exercise of that power is authorized under any
 33 other law of this State.

34 (cf: P.L.1992, c.79, s.15)

35

36 6. This act shall take effect immediately¹, however, the
 37 provisions of section 2 shall not apply to an area determined to be a
 38 redevelopment area by any resolution that is adopted pursuant to
 39 section 6 of P.L.1992, c.79 (C.40A:12A-6) on or before the 90th
 40 day next following the date of enactment¹.

41

42

43

44

45 Codifies protections set forth in certain case law and limits use
 46 of eminent domain under the “Local Redevelopment and Housing
 47 Law.”

ASSEMBLY, No. 3615

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED DECEMBER 13, 2012

Sponsored by:

Assemblyman ALBERT COUTINHO

District 29 (Essex)

Assemblyman ANTHONY M. BUCCO

District 25 (Morris and Somerset)

Assemblywoman NANCY F. MUNOZ

District 21 (Morris, Somerset and Union)

Co-Sponsored by:

Assemblywoman Sumter

SYNOPSIS

Codifies protections set forth in certain case law and limits use of eminent domain under the “Local Redevelopment and Housing Law.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/8/2013)

1 AN ACT concerning procedures and powers under the “Local
2 Redevelopment and Housing Law” and amending P.L.1992,
3 c.79.
4

5 WHEREAS, Article VIII, Section III, paragraph 1 of the New Jersey
6 Constitution empowers the Legislature to authorize municipalities
7 to clear, replan, develop, and redevelop blighted areas; and
8 WHEREAS, The Legislature has authorized municipalities to undertake
9 programs to redevelop blighted areas; and
10 WHEREAS, Municipalities have used these programs to arrest and
11 reverse blighted conditions to promote sound planning, revitalize
12 tax bases, and improve the public safety, health, and welfare of
13 their communities; and
14 WHEREAS, In exercising their responsibilities and implementing
15 redevelopment programs municipalities have exercised the power
16 of eminent domain; and
17 WHEREAS, The 2005 United States Supreme Court decision in *Kelo v.*
18 *City of New London*, 545 U.S. 469 (2005), heightened public
19 concern with the use of eminent domain to implement municipal
20 redevelopment activities; and
21 WHEREAS, The New Jersey Supreme Court in *Gallenthin Realty*
22 *Development, Inc. v. Borough of Paulsboro*, 191 N.J. 344 (2007),
23 clarified one of the criterion for designating redevelopment areas in
24 New Jersey and emphasized that the use of eminent domain cannot
25 be justified to acquire property unless it is blighted, rather than
26 merely not being put to its optimal use; and
27 WHEREAS, The Appellate Division of the Superior Court in *Harrison*
28 *Redevelopment Agency v. DeRose*, 398 N.J. Super. 361 (App. Div.
29 2008) addressed a due process concern with the notice provision
30 under the Local Redevelopment and Housing Law, in cases where
31 eminent domain was used long after the property sought to be
32 acquired was designated as blighted and property owners were
33 precluded from challenging such designation in defense of the
34 condemnation of their properties; and
35 WHEREAS, The "Local Redevelopment and Housing Law" should
36 appropriately be amended to be consistent with these judicial
37 holdings and to address some of the concerns raised with respect to
38 the use of eminent domain in the implementation of redevelopment
39 programs; and
40 WHEREAS, Redevelopment remains a valid and important public
41 purpose and the implementation of redevelopment programs
42 continues to be a vital tool for municipal officials that must be
43 maintained to allow them to continue to meet their governmental
44 responsibilities to prevent, arrest, and reverse deleterious property
45 conditions within their municipal borders; and

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 **WHEREAS**, The State of New Jersey is experiencing the deepest
2 economic recession since the Great Depression; and

3 **WHEREAS**, Municipalities should be encouraged to engage in
4 economic development initiatives by promoting and facilitating
5 such efforts to create local economic stimulus and job creation
6 through the tools and incentives available under the “Local
7 Redevelopment and Housing Law;” and

8 **WHEREAS**, Municipalities should be provided the opportunity to
9 pursue such programs without the use of eminent domain, where
10 possible, and thereby provide assurance to property owners they
11 will not be subject to eminent domain, as well as provide repose for
12 municipalities who can implement redevelopment programs
13 without resorting to eminent domain; now, therefore,

14
15 **BE IT ENACTED** *by the Senate and General Assembly of the State*
16 *of New Jersey:*

17
18 1. Section 5 of P.L.1992, c.79 (40A:12A-5) is amended to read
19 as follows:

20 5. A delineated area may be determined to be in need of
21 redevelopment if, after investigation, notice and hearing as provided
22 in section 6 of P.L.1992, c.79 (C.40A:12A-6), the governing body
23 of the municipality by resolution concludes that within the
24 delineated area any of the following conditions is found:

25 a. The generality of buildings are substandard, unsafe,
26 unsanitary, dilapidated, or obsolescent, or possess any of such
27 characteristics, or are so lacking in light, air, or space, as to be
28 conducive to unwholesome living or working conditions.

29 b. The discontinuance of the use of buildings previously used
30 for commercial, manufacturing, or industrial purposes; the
31 abandonment of such buildings; or the same being allowed to fall
32 into so great a state of disrepair as to be untenable.

33 c. Land that is owned by the municipality, the county, a local
34 housing authority, redevelopment agency or redevelopment entity,
35 or unimproved vacant land that has remained so for a period of ten
36 years prior to adoption of the resolution, and that by reason of its
37 location, remoteness, lack of means of access to developed sections
38 or portions of the municipality, or topography, or nature of the soil,
39 is not likely to be developed through the instrumentality of private
40 capital.

41 d. Areas with buildings or improvements which, by reason of
42 dilapidation, obsolescence, overcrowding, faulty arrangement or
43 design, lack of ventilation, light and sanitary facilities, excessive
44 land coverage, deleterious land use or obsolete layout, or any
45 combination of these or other factors, are detrimental to the safety,
46 health, morals, or welfare of the community.

47 e. A growing lack or total lack of proper utilization of areas
48 caused by the condition of the title, diverse ownership of the real

1 【property】 properties therein or other similar conditions which
2 impede land assemblage or discourage the undertaking of
3 improvements, resulting in a stagnant 【or】 and 【not fully
4 productive】 unproductive condition of land potentially useful and
5 valuable for contributing to and serving the public health, safety
6 and welfare, which condition is presumed to be having a negative
7 social or economic impact or otherwise being detrimental to the
8 safety, health, morals, or welfare of the surrounding area or the
9 community in general.

10 f. Areas, in excess of five contiguous acres, whereon buildings
11 or improvements have been destroyed, consumed by fire,
12 demolished or altered by the action of storm, fire, cyclone, tornado,
13 earthquake or other casualty in such a way that the aggregate
14 assessed value of the area has been materially depreciated.

15 g. In any municipality in which an enterprise zone has been
16 designated pursuant to the "New Jersey Urban Enterprise Zones
17 Act," P.L.1983, c.303 (C.52:27H-60 et seq.) the execution of the
18 actions prescribed in that act for the adoption by the municipality
19 and approval by the New Jersey Urban Enterprise Zone Authority
20 of the zone development plan for the area of the enterprise zone
21 shall be considered sufficient for the determination that the area is
22 in need of redevelopment pursuant to sections 5 and 6 of P.L.1992,
23 c.79 (C.40A:12A-5 and 40A:12A-6) for the purpose of granting tax
24 exemptions within the enterprise zone district pursuant to the
25 provisions of P.L.1991, c.431 (C.40A:20-1 et seq.) or the adoption
26 of a tax abatement and exemption ordinance pursuant to the
27 provisions of P.L.1991, c.441 (C.40A:21-1 et seq.). The
28 municipality shall not utilize any other redevelopment powers
29 within the urban enterprise zone unless the municipal governing
30 body and planning board have also taken the actions and fulfilled
31 the requirements prescribed in P.L.1992, c.79 (C.40A:12A-1 et al.)
32 for determining that the area is in need of redevelopment or an area
33 in need of rehabilitation and the municipal governing body has
34 adopted a redevelopment plan ordinance including the area of the
35 enterprise zone.

36 h. The designation of the delineated area is consistent with
37 smart growth planning principles adopted pursuant to law or
38 regulation.

39 (cf: P.L.2003, c.125, s.3)

40

41 2. Section 6 of P.L.1992, c.79 (40A:12A-6) is amended to read
42 as follows:

43 6. a. No area of a municipality shall be determined a
44 redevelopment area unless the governing body of the municipality
45 shall, by resolution, authorize the planning board to undertake a
46 preliminary investigation to determine whether the proposed area is
47 a redevelopment area according to the criteria set forth in section 5
48 of P.L.1992, c.79 (C.40A:12A-5). Such determination shall be

1 made after public notice and public hearing as provided in
2 subsection b. of this section. The governing body of a municipality
3 shall assign the conduct of the investigation and hearing to the
4 planning board of the municipality. The resolution authorizing the
5 planning board to undertake a preliminary investigation shall state
6 whether the redevelopment area determination shall authorize the
7 municipality to use all those powers provided by the Legislature for
8 use in a redevelopment area other than the use of eminent domain
9 (hereinafter referred to as a "Non-Condensation Redevelopment
10 Area") or whether the redevelopment area determination shall
11 authorize the municipality to use all those powers provided by the
12 Legislature for use in a redevelopment area, including the power of
13 eminent domain (hereinafter referred to as a "Condensation
14 Redevelopment Area").

15 b. (1) Before proceeding to a public hearing on the matter, the
16 planning board shall prepare a map showing the boundaries of the
17 proposed redevelopment area and the location of the various parcels
18 of property included therein. There shall be appended to the map a
19 statement setting forth the basis for the investigation.

20 (2) The planning board shall specify a date for and give notice of
21 a hearing for the purpose of hearing persons who are interested in or
22 would be affected by a determination that the delineated area is a
23 redevelopment area.

24 (3) (a) The hearing notice shall set forth the general boundaries
25 of the area to be investigated and state that a map has been prepared
26 and can be inspected at the office of the municipal clerk.

27 (b) If the governing body resolution assigning the investigation
28 to the planning board, pursuant to subsection a. of this section,
29 stated that the redevelopment determination shall establish a Non-
30 Condensation Redevelopment Area, the notice of the hearing shall
31 specifically state that a redevelopment area determination shall not
32 authorize the municipality to exercise the power of eminent domain
33 to acquire any property in the delineated area.

34 (c) If the resolution assigning the investigation to the planning
35 board, pursuant to subsection a. of this section, stated that the
36 redevelopment determination shall establish a Condensation
37 Redevelopment Area, the notice of the hearing shall specifically
38 state that a redevelopment area determination shall authorize the
39 municipality to exercise the power of eminent domain to acquire
40 property in the delineated area.

41 (d) A copy of the notice shall be published in a newspaper of
42 general circulation in the municipality once each week for two
43 consecutive weeks, and the last publication shall be not less than ten
44 days prior to the date set for the hearing. A copy of the notice shall
45 be mailed at least ten days prior to the date set for the hearing to the
46 last owner, if any, of each parcel of property within the area
47 according to the assessment records of the municipality. A notice
48 shall also be sent to all persons at their last known address, if any,

1 whose names are noted on the assessment records as claimants of an
2 interest in any such parcel. The assessor of the municipality shall
3 make a notation upon the records when requested to do so by any
4 person claiming to have an interest in any parcel of property in the
5 municipality. The notice shall be published and mailed by the
6 municipal clerk, or by such clerk or official as the planning board
7 shall otherwise designate. Failure to mail any such notice shall not
8 invalidate the investigation or determination thereon.

9 (4) At the hearing, which may be adjourned from time to time,
10 the planning board shall hear all persons who are interested in or
11 would be affected by a determination that the delineated area is a
12 redevelopment area. All objections to such a determination and
13 evidence in support of those objections, given orally or in writing,
14 shall be received and considered and made part of the public record.

15 (5) (a) After completing its hearing on this matter, the planning
16 board shall recommend that the delineated area, or any part thereof,
17 be determined, or not be determined, by the municipal governing
18 body to be a redevelopment area.

19 (b) After receiving the recommendation of the planning board,
20 the municipal governing body may adopt a resolution determining
21 that the delineated area, or any part thereof, is a redevelopment
22 area.

23 (c) Upon the adoption of a resolution, the clerk of the
24 municipality shall, forthwith, transmit a copy of the resolution to
25 the Commissioner of Community Affairs for review. If the area in
26 need of redevelopment is not situated in an area in which
27 development or redevelopment is to be encouraged pursuant to any
28 State law or regulation promulgated pursuant thereto, the
29 determination shall not take effect without first receiving the review
30 and the approval of the commissioner. If the commissioner does
31 not issue an approval or disapproval within 30 calendar days of
32 transmittal by the clerk, the determination shall be deemed to be
33 approved. If the area in need of redevelopment is situated in an
34 area in which development or redevelopment is to be encouraged
35 pursuant to any State law or regulation promulgated pursuant
36 thereto, then the determination shall take effect after the clerk has
37 transmitted a copy of the resolution to the commissioner. The
38 determination, if supported by substantial evidence and, if required,
39 approved by the commissioner, shall be binding and conclusive
40 upon all persons affected by the determination.

41 (d) Notice of the determination shall be served, within 10 days
42 after the determination, upon all record owners of property located
43 within the delineated area, those whose names are listed on the tax
44 assessor's records, and upon each person who filed a written
45 objection thereto and stated, in or upon the written submission, an
46 address to which notice of determination may be sent.

47 (e) If the governing body resolution assigning the investigation
48 to the planning board, pursuant to subsection a. of this section,

1 stated that the redevelopment determination shall establish a
2 Condemnation Redevelopment Area, the notice of the determination
3 required pursuant to subparagraph (d) of this paragraph shall
4 indicate that:

5 (i) the determination operates as a finding of public purpose and
6 authorizes the municipality to exercise the power of eminent
7 domain to acquire property in the redevelopment area, and

8 (ii) legal action to challenge the determination, must be
9 commenced within 45 days of receipt of notice and that failure to
10 do so shall preclude an owner from later raising such challenge.

11 (f) No municipality shall be authorized to exercise the power of
12 eminent domain to acquire property within a redevelopment area on
13 or after 90 days from the effective date of P.L. c. (C.)
14 (pending before the Legislature as this bill) unless notice to
15 property owners within the redevelopment area was provided
16 pursuant to subparagraph (e) of this paragraph. This provision shall
17 not apply to property located within an area determined to be in
18 need of redevelopment prior to the effective date of P.L. c.
19 (C.) (pending before the Legislature as this bill).

20 (g) If a municipal governing body has determined an area to be a
21 Non-Condemnation Redevelopment Area and is unable to acquire
22 property that is necessary for the redevelopment project, the
23 municipality may initiate and follow the process set forth in this
24 section to determine whether the area or property is a
25 Condemnation Redevelopment Area. Such determination shall be
26 based upon the then-existing conditions and not based upon the
27 condition of the area or property at the time of the prior Non-
28 Condemnation Redevelopment Area determination.

29 (h) A property owner who has received notice pursuant to this
30 section who does not file a legal challenge to the redevelopment
31 determination affecting his or her property within 45 days of receipt
32 of such notice shall thereafter be barred from filing such a challenge
33 and, in the case of a Condemnation Redevelopment Area and upon
34 compliance with the notice provisions of subparagraph (e) of this
35 paragraph, shall further be barred from asserting a challenge to the
36 redevelopment determination as a defense in any condemnation
37 proceeding to acquire the property.

38 (6) **【If written objections were filed in connection with the**
39 **hearing the】** The municipality shall, for 45 days next following its
40 determination 【to which the objections were filed】, take no further
41 action to acquire any property by condemnation within the
42 redevelopment area.

43 (7) **【a】** any person 【who filed a written objection to a
44 determination by the municipality pursuant to this subsection】
45 shall, within 45 days after the adoption by the municipality of the
46 determination 【to which the person objected】, apply to the Superior
47 Court, the court may grant further review of the determination by

1 procedure in lieu of prerogative writ; and in any such action the
2 court may make any incidental order that it deems proper.

3 c. An area determined to be in need of redevelopment pursuant
4 to this section shall be deemed to be a "blighted area" for the
5 purposes of Article VIII, Section III, paragraph 1 of the
6 Constitution. If an area is determined to be a redevelopment area
7 and a redevelopment plan is adopted for that area in accordance
8 with the provisions of this act, the municipality is authorized to
9 utilize all those powers provided in section 8 of P.L.1992, c.79
10 (C.40A:12A-8), except that a municipality may not acquire any land
11 or building by condemnation pursuant to subsection c. of that
12 section unless the municipality has complied with the provisions of
13 subparagraph (e) of paragraph (5) of subsection b. of this section.
14 (cf: P.L.2003, c.125, s.4)
15

16 3. Section 8 of P.L.1992, c.79 (C.40A:12A-8) is amended to
17 read as follows:

18 8. Upon the adoption of a redevelopment plan pursuant to
19 section 7 of P.L.1992, c.79 (C.40A:12A-7), the municipality or
20 redevelopment entity designated by the governing body may
21 proceed with the clearance, replanning, development and
22 redevelopment of the area designated in that plan. In order to carry
23 out and effectuate the purposes of this act and the terms of the
24 redevelopment plan, the municipality or designated redevelopment
25 entity may:

26 a. Undertake redevelopment projects, and for this purpose issue
27 bonds in accordance with the provisions of section 29 of P.L.1992,
28 c.79 (C.40A:12A-29).

29 b. Acquire property pursuant to subsection i. of section 22 of
30 P.L.1992, c.79 (C.40A:12A-22).

31 c. Acquire, by condemnation, any land or building which is
32 necessary for the redevelopment project, pursuant to the provisions
33 of the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et
34 seq.), provided it has complied with the notice requirements in
35 subparagraph (e) of paragraph (5) of subsection b. of section 6 of
36 P.L.1992, c.79 (40A:12A-6).

37 d. Clear any area owned or acquired and install, construct or
38 reconstruct streets, facilities, utilities, and site improvements
39 essential to the preparation of sites for use in accordance with the
40 redevelopment plan.

41 e. Prepare or arrange by contract for the provision of
42 professional services and the preparation of plans by registered
43 architects, licensed professional engineers or planners, or other
44 consultants for the carrying out of redevelopment projects.

45 f. Arrange or contract with public agencies or redevelopers for
46 the planning, replanning, construction, or undertaking of any
47 project or redevelopment work, or any part thereof; negotiate and
48 collect revenue from a redeveloper to defray the costs of the

1 redevelopment entity, including where applicable the costs incurred
2 in conjunction with bonds, notes or other obligations issued by the
3 redevelopment entity, and to secure payment of such revenue; as
4 part of any such arrangement or contract, provide for extension of
5 credit, or making of loans, to redevelopers to finance any project or
6 redevelopment work, or upon a finding that the project or
7 redevelopment work would not be undertaken but for the provision
8 of financial assistance, or would not be undertaken in its intended
9 scope without the provision of financial assistance, provide as part
10 of an arrangement or contract for capital grants to redevelopers; and
11 arrange or contract with public agencies or redevelopers for the
12 opening, grading or closing of streets, roads, roadways, alleys, or
13 other places or for the furnishing of facilities or for the acquisition
14 by such agency of property options or property rights or for the
15 furnishing of property or services in connection with a
16 redevelopment area.

17 g. Except with regard to property subject to the requirements of
18 P.L.2008, c.65 (C.40A:5-14.2 et al.), lease or convey property or
19 improvements to any other party pursuant to this section, without
20 public bidding and at such prices and upon such terms as it deems
21 reasonable, provided that the lease or conveyance is made in
22 conjunction with a redevelopment plan, notwithstanding the
23 provisions of any law, rule, or regulation to the contrary.

24 h. Enter upon any building or property in any redevelopment
25 area in order to conduct investigations or make surveys, sounding or
26 test borings necessary to carry out the purposes of this act.

27 i. Arrange or contract with a public agency for the relocation,
28 pursuant to the "Relocation Assistance Law of 1967," P.L.1967,
29 c.79 (C.52:31B-1 et seq.) and the "Relocation Assistance Act,"
30 P.L.1971, c.362 (C.20:4-1 et seq.), of residents, industry or
31 commerce displaced from a redevelopment area.

32 j. Make, consistent with the redevelopment plan: (1) plans for
33 carrying out a program of voluntary repair and rehabilitation of
34 buildings and improvements; and (2) plans for the enforcement of
35 laws, codes, and regulations relating to the use and occupancy of
36 buildings and improvements, and to the compulsory repair,
37 rehabilitation, demolition, or removal of buildings and
38 improvements.

39 k. Request that the planning board recommend and governing
40 body designate particular areas as being in need of redevelopment
41 or rehabilitation in accordance with the provisions of this act and
42 make recommendations for the redevelopment or rehabilitation of
43 such areas.

44 l. Study the recommendations of the planning board or
45 governing body for redevelopment of the area.

46 m. Publish and disseminate information concerning any
47 redevelopment area, plan or project.

1 n. Do all things necessary or convenient to carry out its powers.
2 (cf: P.L.2008, c.65, s.8)

3

4 4. Section 14 of P.L.1992, c.79 (C.40A:12A-14) is amended to
5 read as follows:

6 14. a. A delineated area may be determined to be in need of
7 rehabilitation if the governing body of the municipality determines
8 by resolution that a program of rehabilitation, as defined in section
9 3 of P.L.1992, c.79 (C.40A:12A-3), may be expected to prevent
10 further deterioration and promote the overall development of the
11 community; and that there exist in that area any of the following
12 conditions such that (1) a significant portion of structures therein
13 are in a deteriorated or substandard condition **[and];** (2) more than
14 half of the housing stock in the delineated area is at least 50 years
15 old; (3) there is a **[continuing]** pattern of vacancy, abandonment or
16 underutilization of properties in the area**[, with];** (4) there is a
17 persistent arrearage of property tax payments **[thereon or** (2) more
18 than half of the housing stock in the delineated area is at least 50
19 years old,] on properties in the area; (5) environmental
20 contamination is discouraging improvements and investment in
21 properties in the area; or (6) a majority of the water and sewer
22 infrastructure in the delineated area is at least 50 years old and is in
23 need of repair or substantial maintenance**;** and (3) a program of
24 rehabilitation, as defined in section 3 of P.L.1992, c.79
25 (C.40A:12A-3), may be expected to prevent further deterioration
26 and promote the overall development of the community**].** Where
27 warranted by consideration of the overall conditions and
28 requirements of the community, a finding of need for rehabilitation
29 may extend to the entire area of a municipality. Prior to adoption of
30 the resolution, the governing body shall submit it to the municipal
31 planning board for its review. Within 45 days of its receipt of the
32 proposed resolution, the municipal planning board shall submit its
33 recommendations regarding the proposed resolution, including any
34 modifications which it may recommend, to the governing body for
35 its consideration. Thereafter, or after the expiration of the 45 days
36 if the municipal planning board does not submit recommendations,
37 the governing body may adopt the resolution, with or without
38 modification. The resolution shall not become effective without the
39 approval of the commissioner pursuant to section 6 of P.L.1992,
40 c.79 (C.40A:12A-6), if otherwise required pursuant to that section.

41 b. A delineated area shall be deemed to have been determined
42 to be an area in need of rehabilitation in accordance with the
43 provisions of this act if it has heretofore been determined to be an
44 area in need of rehabilitation pursuant to P.L.1975, c.104 (C.54:4-
45 3.72 et seq.), P.L.1977, c.12 (C.54:4-3.95 et seq.) or P.L.1979,
46 c.233 (C.54:4-3.121 et al.).

1 c. (1) A municipality may adopt an ordinance declaring a
2 renovation housing project to be an area in need of rehabilitation for
3 the purposes of Article VIII, Section I, paragraph 6 of the New
4 Jersey Constitution if the need for renovation resulted from
5 conflagration.

6 (2) For the purposes of this subsection, "renovation housing
7 project" means any work or undertaking to provide a decent, safe,
8 and sanitary dwelling, to exclusively benefit a specific household,
9 by the renovation, reconstruction, or replacement of the household's
10 home on the same lot by either a charitable entity organized to
11 perform home renovations or by a for-profit builder using 75% or
12 more volunteer labor-hours to accomplish the construction for the
13 project. The undertaking may include any buildings; demolition,
14 clearance, or removal of buildings from land; equipment; facilities;
15 or other personal properties or interests therein which are necessary,
16 convenient, or desirable appurtenances of the undertaking.

17 d. (1) A municipality may adopt an ordinance declaring a
18 renovation housing project to be an area in need of rehabilitation for
19 the purposes of Article VIII, Section I, paragraph 6 of the New
20 Jersey Constitution if at least half of the number of people
21 occupying the dwelling as their primary residence qualify for a
22 federal income tax credit pursuant to 26 U.S.C. s.22 as a result of
23 being permanently and totally disabled and the improvements to be
24 made to the dwelling are made substantially to accommodate those
25 disabilities.

26 (2) For the purposes of this subsection, "renovation housing
27 project" means any work or undertaking to provide a decent, safe,
28 and sanitary single-family dwelling, to exclusively benefit at least
29 half of the number of people occupying a dwelling as their primary
30 residence, by the renovation, reconstruction, or replacement of that
31 dwelling on the same lot by either a charitable entity organized to
32 perform home renovations or by a for-profit builder using 75% or
33 more volunteer labor-hours to accomplish the construction for the
34 project. The undertaking may include any buildings; demolition,
35 clearance, or removal of buildings from land; equipment; facilities;
36 or other personal properties or interests therein which are necessary,
37 convenient, or desirable appurtenances of the undertaking.

38 (cf: P.L.2007, c.91, s.1)

39

40 5. Section 15 of P.L.1992, C.79 (40A:12A-15) is amended to
41 read as follows:

42 15. In accordance with the provisions of a redevelopment plan
43 adopted pursuant to section 7 of P.L.1992, c.79 (C.40A:12A-7), a
44 municipality or redevelopment entity may proceed with clearance,
45 replanning, conservation, development, redevelopment and
46 rehabilitation of an area in need of rehabilitation. With respect to a
47 redevelopment project in an area in need of rehabilitation, the
48 municipality or redevelopment entity, upon the adoption of a

1 redevelopment plan for the area, may perform any of the actions set
2 forth in section 8 of P.L.1992, c.79 (C.40A:12A-8), except that with
3 respect to such a project the municipality shall not have the power
4 to take or acquire private property by condemnation in furtherance
5 of a redevelopment plan, unless: a. the area is within an area
6 determined to be in [need of redevelopment pursuant to this act] a
7 Condemnation Redevelopment Area and the municipality has
8 complied with the notice requirements under subparagraph (e) of
9 paragraph (5) of subsection b. of section 6 of P.L.1992, c.79
10 (40A:12A-6); or b. exercise of that power is authorized under any
11 other law of this State.
12 (cf: P.L.1992, c.79, s.15)

13

14 6. This act shall take effect immediately.

15

16

17

STATEMENT

18

19 This bill would amend the "Local Redevelopment and Housing
20 Law," ("LRHL") to incorporate the holding of the New Jersey
21 Supreme Court in Gallenthin v. Paulsboro, 191 N.J. 344 (2007),
22 which clarified one of the statutory criteria that must exist in order
23 for an area to be determined in need of redevelopment and
24 emphasized that the use of eminent domain cannot be justified to
25 acquire property solely upon the basis that it is underutilized, unless
26 the property otherwise meets the criteria for blight.

27 The bill would also amend the LRHL to address the due process
28 concerns raised in the Appellate Division decision Harrison
29 Redevelopment Agency v. DeRose, 398 N.J. Super. 361 (App. Div.
30 2008) concerning the adequacy of notice to property owners that a
31 redevelopment area determination authorizes the taking of property
32 by condemnation. The bill would enhance the LRHL notice
33 provisions to require municipalities to advise property owners
34 within a proposed redevelopment area of the municipality's
35 intention to use or not use eminent domain to facilitate a
36 redevelopment plan at the outset of the investigation as well as
37 providing specific notice of such designation. Unless a
38 municipality notifies owners of property located in a proposed
39 redevelopment area that the designation will allow the municipality
40 to take property located in the area by eminent domain, the LRHL
41 will not authorize the use of eminent domain.

42 The bill would also authorize municipalities that intend to
43 implement redevelopment initiatives without using eminent domain
44 to do so but to still take advantage of the other tools available under
45 the LRHL that encourage and facilitate economic development
46 activities, create job opportunities, increase commerce, and enhance
47 ratable values within their communities during these difficult
48 economic times.

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3615

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 7, 2013

The Assembly Commerce and Economic Development Committee reports favorably and with committee amendments Assembly Bill No. 3615.

This bill would amend the "Local Redevelopment and Housing Law," ("LRHL") to incorporate the holding of the New Jersey Supreme Court in Gallenthin v. Paulsboro, 191 N.J.344 (2007), which clarified one of the statutory criteria that must exist in order for an area to be determined in need of redevelopment and emphasized that the use of eminent domain cannot be justified to acquire property solely upon the basis that it is underutilized, unless the property otherwise meets the criteria for blight.

The bill would also amend the LRHL to address the due process concerns raised in the Appellate Division decision Harrison Redevelopment Agency v. DeRose, 398 N.J. Super. 361 (App. Div. 2008) concerning the adequacy of notice to property owners that a redevelopment area determination authorizes the taking of property by condemnation. The bill would enhance the LRHL notice provisions to require municipalities to advise property owners within a proposed redevelopment area of the municipality's intention to use or not use eminent domain to facilitate a redevelopment plan at the outset of the investigation as well as providing specific notice of such designation. Unless a municipality notifies owners of property located in a proposed redevelopment area that the designation will allow the municipality to take property located in the area by eminent domain, the municipality will not be authorized to condemn property in the designated area for redevelopment purposes.

The bill would also authorize municipalities that intend to implement redevelopment initiatives, without using eminent domain, to do so but to still take advantage of the other tools available under the LRHL that encourage and facilitate economic development activities, create job opportunities, increase commerce, and enhance ratable values within their communities during these difficult economic times.

The bill would also establish greater flexibility for a governing body to determine a delineated area as an area in need of rehabilitation.

COMMITTEE AMENDMENTS:

The committee amended the bill to clarify that:

- the bill will prohibit municipalities and redevelopment entities from exercising the power of eminent domain to acquire property for redevelopment purposes within a Non-Condensation Redevelopment Area.
- the bill will not prohibit a municipality or redevelopment entity from condemning property that is located in an area that was determined to be in need of redevelopment prior to the effective date of the bill.
- the enhanced notice provisions established by the bill will apply prospectively but will allow redevelopment area determinations to proceed under current law if they are adopted within 90 days next following the date of enactment.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 3615

with Assembly Floor Amendments
(Proposed by Assemblyman COUTINHO)

ADOPTED: APRIL 29, 2013

This amendment would clearly indicate that it is in the public interest to establish certainty and repose with respect to the designation of redevelopment areas that authorize a municipality to exercise the power of eminent domain, after the time to challenge the designation has expired. It would also allow municipalities and property owners to enter into standstill agreements in order to defer litigation to a future point in order to forestall costly litigation, which may not be necessary if eminent domain is not utilized.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[Second Reprint]
ASSEMBLY, No. 3615

STATE OF NEW JERSEY

DATED: JUNE 3, 2013

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 3615 (2R).

This bill amends the “Local Redevelopment and Housing Law,” (“LRHL”) P.L.1992, c.79 (C.40A:12A-1 et al.) to incorporate the holding of the New Jersey Supreme Court in Gallenthin v. Paulsboro, 191 N.J. 344 (2007), which clarified one of the statutory criteria that must exist in order for an area to be determined in need of redevelopment and emphasized that the use of eminent domain cannot be justified to acquire property solely upon the basis that it is underutilized, unless the property otherwise meets the criteria for blight.

The bill also amends the LRHL to address the due process concerns raised in the Appellate Division decision Harrison Redevelopment Agency v. DeRose, 398 N.J. Super. 361 (App. Div. 2008) concerning the adequacy of notice to property owners that a redevelopment area determination authorizes the taking of property by condemnation. This bill amends the LRHL notice provision to require municipalities to advise property owners within a proposed redevelopment area of the municipality’s intention to either use or not use eminent domain to facilitate a redevelopment plan at the outset of the investigation as well as providing specific notice of such designation. Unless a municipality notifies owners of properties located in a proposed redevelopment area that the designation will allow the municipality to take property located in the area by eminent domain, the municipality will not be authorized to condemn property in the designated area for redevelopment purposes.

The bill also authorizes municipalities to implement redevelopment initiatives, without using eminent domain, while taking advantage of the other tools available under the LRHL. Municipalities and property owners would be also permitted to enter into standstill agreements in order to defer litigation to a future point in order to forestall costly litigation, which may not be necessary if eminent domain is not utilized. Finally, this bill establishes greater flexibility for a governing body to determine a delineated area as an area of need of rehabilitation.

As reported, this bill is identical to Senate bill No. 2447 (1R), as amended and reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services (OLS) has determined that the bill would have an indeterminate fiscal impact on local redevelopment entities. If a local redevelopment entity designates an area as a “Condemnation Redevelopment Area,” it may have to provide for additional expenditures related to the printing and mailing of certain public notices required to be provided to the owners of property within each area. The OLS notes that the bill requires a property owner to file a legal challenge to a redevelopment determination affecting his or her property within 45 days of receipt of notice that the property is in a “Condemnation Redevelopment Area.” To the extent that the new limit reduces the number of legal challenges, local redevelopment entities may experience a reduction in litigation costs. Finally, local redevelopment entities may incur new costs associated with a preliminary investigation to determine whether property in a “Non-Condemnation Redevelopment Area” should be reclassified to a “Condemnation Redevelopment Area.”

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 3615

STATE OF NEW JERSEY 215th LEGISLATURE

DATED: MAY 23, 2013

SUMMARY

- Synopsis:** Codifies protections set forth in certain case law and limits use of eminent domain under the “Local Redevelopment and Housing Law”
- Type of Impact:** Indeterminate impact on local finances.
- Agencies Affected:** Local redevelopment entities.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
Local Cost	Indeterminate Fiscal Impact – See comments below		

- Local redevelopment entities may incur additional expenditures associated with the printing and mailing of notice to the owners of properties in a “Condemnation Redevelopment Area.” “A municipality may be a local redevelopment entity.”
- To the extent that the new limit on the amount of time property owners have to file a legal challenge to a redevelopment determination reduces the number of such challenges, local redevelopment entities may experience a reduction in litigation costs.
- Local redevelopment entities may incur new costs associated with a preliminary investigation to determine whether property in a “Non-Condemnation Redevelopment Area” should be reclassified to a “Condemnation Redevelopment Area.”

BILL DESCRIPTION

Assembly Bill No. 3615 (2R) of 2012 would amend the “Local Redevelopment and Housing Law,” (“LRHL”) P.L.1992, c.79 (C.40A:12A-1) to incorporate the holding of the New Jersey Supreme Court in Gallenthin v. Paulsboro, 191 N.J. 344 (2007), which clarified one of the statutory criteria that must exist in order for an area to be determined in need of redevelopment and emphasized that the use of eminent domain cannot be justified to acquire property solely upon the basis that it is underutilized, unless the property otherwise meets the criteria for blight.

The bill would also amend the LRHL to address the due process concerns raised in the Appellate Division decision Harrison Redevelopment Agency v. DeRose, 398 N.J. Super. 361 (App. Div. 2008) concerning the adequacy of notice to property owners that a redevelopment area determination authorizes the taking of property by condemnation. This legislation amends the LRHL notice provision to require municipalities to advise property owners within a proposed redevelopment area of the municipality's intention to use or not use eminent domain to facilitate a redevelopment plan at the outset of the investigation as well as providing specific notice of such designation. Unless a municipality notifies owners of properties located in a proposed redevelopment area that the designation will allow the municipality to take property located in the area by eminent domain, the municipality will not be authorized to condemn property in the designated area for redevelopment purposes.

The bill also authorizes municipalities to implement redevelopment initiatives, without using eminent domain, while taking advantage of the other tools available under the LRHL. Municipalities and property owners would be also permitted to enter into standstill agreements in order to defer litigation to a future point in order to forestall costly litigation, which may not be necessary if eminent domain is not utilized. Finally, this bill establishes greater flexibility for a governing body to determine a delineated area as an area of need of rehabilitation.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) has determined that the enactment of Assembly Bill No. 3615 (2R) would have an indeterminate fiscal impact on local redevelopment entities. If a local redevelopment entity designates an area as a "Condemnation Redevelopment Area," it may have to provide for additional expenditures related to the printing and mailing of certain public notices required to be provided to the owners of property within each area. The OLS notes that the bill requires a property owner to file a legal challenge to a redevelopment determination affecting his or her property within 45 days of receipt of notice that the property is in a "Condemnation Redevelopment Area." To the extent that the new limit reduces the number of legal challenges, local redevelopment entities may experience a reduction in litigation costs. Finally, local redevelopment entities may incur new costs associated with a preliminary investigation to determine whether property in a "Non-Condemnation Redevelopment Area" should be reclassified to a "Condemnation Redevelopment Area."

Section: Local Government

Analyst: Scott A. Brodsky
Senior Fiscal Analyst

Approved: David J. Rosen
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE, No. 2447

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED JANUARY 8, 2013

Sponsored by:

Senator JEFF VAN DREW

District 1 (Atlantic, Cape May and Cumberland)

Senator RONALD L. RICE

District 28 (Essex)

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

Senator ANTHONY R. BUCCO

District 25 (Morris and Somerset)

Senator DIANE B. ALLEN

District 7 (Burlington)

SYNOPSIS

Codifies protections set forth in certain case law and limits use of eminent domain under the “Local Redevelopment and Housing Law.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/21/2013)

S2447 VAN DREW, RICE

2

- 1 **AN ACT** concerning procedures and powers under the “Local
2 Redevelopment and Housing Law” and amending P.L.1992,
3 c.79.
4
- 5 **WHEREAS**, Article VIII, Section III, paragraph 1 of the New Jersey
6 Constitution empowers the Legislature to authorize municipalities
7 to clear, replan, develop, and redevelop blighted areas; and
- 8 **WHEREAS**, The Legislature has authorized municipalities to undertake
9 programs to redevelop blighted areas; and
- 10 **WHEREAS**, Municipalities have used these programs to arrest and
11 reverse blighted conditions to promote sound planning, revitalize
12 tax bases, and improve the public safety, health, and welfare of
13 their communities; and
- 14 **WHEREAS**, In exercising their responsibilities and implementing
15 redevelopment programs municipalities have exercised the power
16 of eminent domain; and
- 17 **WHEREAS**, The 2005 United States Supreme Court decision in *Kelo v.*
18 *City of New London*, 545 U.S. 469 (2005), heightened public
19 concern with the use of eminent domain to implement municipal
20 redevelopment activities; and
- 21 **WHEREAS**, The New Jersey Supreme Court in *Gallenthin Realty*
22 *Development, Inc. v. Borough of Paulsboro*, 191 N.J. 344 (2007),
23 clarified one of the criterion for designating redevelopment areas in
24 New Jersey and emphasized that the use of eminent domain cannot
25 be justified to acquire property unless it is blighted, rather than
26 merely not being put to its optimal use; and
- 27 **WHEREAS**, The Appellate Division of the Superior Court in *Harrison*
28 *Redevelopment Agency v. DeRose*, 398 N.J. Super. 361 (App. Div.
29 2008) addressed a due process concern with the notice provision
30 under the Local Redevelopment and Housing Law, in cases where
31 eminent domain was used long after the property sought to be
32 acquired was designated as blighted and property owners were
33 precluded from challenging such designation in defense of the
34 condemnation of their properties; and
- 35 **WHEREAS**, The "Local Redevelopment and Housing Law" should
36 appropriately be amended to be consistent with these judicial
37 holdings and to address some of the concerns raised with respect to
38 the use of eminent domain in the implementation of redevelopment
39 programs; and
- 40 **WHEREAS**, Redevelopment remains a valid and important public
41 purpose and the implementation of redevelopment programs
42 continues to be a vital tool for municipal officials that must be
43 maintained to allow them to continue to meet their governmental
44 responsibilities to prevent, arrest, and reverse deleterious property
45 conditions within their municipal borders; and

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 **WHEREAS**, The State of New Jersey is experiencing the deepest
2 economic recession since the Great Depression; and

3 **WHEREAS**, Municipalities should be encouraged to engage in
4 economic development initiatives by promoting and facilitating
5 such efforts to create local economic stimulus and job creation
6 through the tools and incentives available under the “Local
7 Redevelopment and Housing Law;” and

8 **WHEREAS**, Municipalities should be provided the opportunity to
9 pursue such programs without the use of eminent domain, where
10 possible, and thereby provide assurance to property owners they
11 will not be subject to eminent domain, as well as provide repose for
12 municipalities who can implement redevelopment programs
13 without resorting to eminent domain; now, therefore,

14
15 **BE IT ENACTED** *by the Senate and General Assembly of the State*
16 *of New Jersey:*

17
18 1. Section 5 of P.L.1992, c.79 (40A:12A-5) is amended to read
19 as follows:

20 5. A delineated area may be determined to be in need of
21 redevelopment if, after investigation, notice and hearing as provided
22 in section 6 of P.L.1992, c.79 (C.40A:12A-6), the governing body
23 of the municipality by resolution concludes that within the
24 delineated area any of the following conditions is found:

25 a. The generality of buildings are substandard, unsafe,
26 unsanitary, dilapidated, or obsolescent, or possess any of such
27 characteristics, or are so lacking in light, air, or space, as to be
28 conducive to unwholesome living or working conditions.

29 b. The discontinuance of the use of buildings previously used
30 for commercial, manufacturing, or industrial purposes; the
31 abandonment of such buildings; or the same being allowed to fall
32 into so great a state of disrepair as to be untenable.

33 c. Land that is owned by the municipality, the county, a local
34 housing authority, redevelopment agency or redevelopment entity,
35 or unimproved vacant land that has remained so for a period of ten
36 years prior to adoption of the resolution, and that by reason of its
37 location, remoteness, lack of means of access to developed sections
38 or portions of the municipality, or topography, or nature of the soil,
39 is not likely to be developed through the instrumentality of private
40 capital.

41 d. Areas with buildings or improvements which, by reason of
42 dilapidation, obsolescence, overcrowding, faulty arrangement or
43 design, lack of ventilation, light and sanitary facilities, excessive
44 land coverage, deleterious land use or obsolete layout, or any
45 combination of these or other factors, are detrimental to the safety,
46 health, morals, or welfare of the community.

47 e. A growing lack or total lack of proper utilization of areas
48 caused by the condition of the title, diverse ownership of the real

1 **【property】** properties therein or other similar conditions which
2 impede land assemblage or discourage the undertaking of
3 improvements, resulting in a stagnant **【or】** and **【not fully**
4 **productive】** unproductive condition of land potentially useful and
5 valuable for contributing to and serving the public health, safety
6 and welfare, which condition is presumed to be having a negative
7 social or economic impact or otherwise being detrimental to the
8 safety, health, morals, or welfare of the surrounding area or the
9 community in general.

10 f. Areas, in excess of five contiguous acres, whereon buildings
11 or improvements have been destroyed, consumed by fire,
12 demolished or altered by the action of storm, fire, cyclone, tornado,
13 earthquake or other casualty in such a way that the aggregate
14 assessed value of the area has been materially depreciated.

15 g. In any municipality in which an enterprise zone has been
16 designated pursuant to the "New Jersey Urban Enterprise Zones
17 Act," P.L.1983, c.303 (C.52:27H-60 et seq.) the execution of the
18 actions prescribed in that act for the adoption by the municipality
19 and approval by the New Jersey Urban Enterprise Zone Authority
20 of the zone development plan for the area of the enterprise zone
21 shall be considered sufficient for the determination that the area is
22 in need of redevelopment pursuant to sections 5 and 6 of P.L.1992,
23 c.79 (C.40A:12A-5 and 40A:12A-6) for the purpose of granting tax
24 exemptions within the enterprise zone district pursuant to the
25 provisions of P.L.1991, c.431 (C.40A:20-1 et seq.) or the adoption
26 of a tax abatement and exemption ordinance pursuant to the
27 provisions of P.L.1991, c.441 (C.40A:21-1 et seq.). The
28 municipality shall not utilize any other redevelopment powers
29 within the urban enterprise zone unless the municipal governing
30 body and planning board have also taken the actions and fulfilled
31 the requirements prescribed in P.L.1992, c.79 (C.40A:12A-1 et al.)
32 for determining that the area is in need of redevelopment or an area
33 in need of rehabilitation and the municipal governing body has
34 adopted a redevelopment plan ordinance including the area of the
35 enterprise zone.

36 h. The designation of the delineated area is consistent with
37 smart growth planning principles adopted pursuant to law or
38 regulation.

39 (cf: P.L.2003, c.125, s.3)

40
41 2. Section 6 of P.L.1992, c.79 (40A:12A-6) is amended to read
42 as follows:

43 6. a. No area of a municipality shall be determined a
44 redevelopment area unless the governing body of the municipality
45 shall, by resolution, authorize the planning board to undertake a
46 preliminary investigation to determine whether the proposed area is
47 a redevelopment area according to the criteria set forth in section 5
48 of P.L.1992, c.79 (C.40A:12A-5). Such determination shall be

1 made after public notice and public hearing as provided in
2 subsection b. of this section. The governing body of a municipality
3 shall assign the conduct of the investigation and hearing to the
4 planning board of the municipality. The resolution authorizing the
5 planning board to undertake a preliminary investigation shall state
6 whether the redevelopment area determination shall authorize the
7 municipality to use all those powers provided by the Legislature for
8 use in a redevelopment area other than the use of eminent domain
9 (hereinafter referred to as a "Non-Condensation Redevelopment
10 Area") or whether the redevelopment area determination shall
11 authorize the municipality to use all those powers provided by the
12 Legislature for use in a redevelopment area, including the power of
13 eminent domain (hereinafter referred to as a "Condensation
14 Redevelopment Area").

15 b. (1) Before proceeding to a public hearing on the matter, the
16 planning board shall prepare a map showing the boundaries of the
17 proposed redevelopment area and the location of the various parcels
18 of property included therein. There shall be appended to the map a
19 statement setting forth the basis for the investigation.

20 (2) The planning board shall specify a date for and give notice
21 of a hearing for the purpose of hearing persons who are interested in
22 or would be affected by a determination that the delineated area is a
23 redevelopment area.

24 (3) (a) The hearing notice shall set forth the general boundaries
25 of the area to be investigated and state that a map has been prepared
26 and can be inspected at the office of the municipal clerk.

27 (b) If the governing body resolution assigning the investigation
28 to the planning board, pursuant to subsection a. of this section,
29 stated that the redevelopment determination shall establish a Non-
30 Condensation Redevelopment Area, the notice of the hearing shall
31 specifically state that a redevelopment area determination shall not
32 authorize the municipality to exercise the power of eminent domain
33 to acquire any property in the delineated area.

34 (c) If the resolution assigning the investigation to the planning
35 board, pursuant to subsection a. of this section, stated that the
36 redevelopment determination shall establish a Condensation
37 Redevelopment Area, the notice of the hearing shall specifically
38 state that a redevelopment area determination shall authorize the
39 municipality to exercise the power of eminent domain to acquire
40 property in the delineated area.

41 (d) A copy of the notice shall be published in a newspaper of
42 general circulation in the municipality once each week for two
43 consecutive weeks, and the last publication shall be not less than ten
44 days prior to the date set for the hearing. A copy of the notice shall
45 be mailed at least ten days prior to the date set for the hearing to the
46 last owner, if any, of each parcel of property within the area
47 according to the assessment records of the municipality. A notice
48 shall also be sent to all persons at their last known address, if any,

1 whose names are noted on the assessment records as claimants of an
2 interest in any such parcel. The assessor of the municipality shall
3 make a notation upon the records when requested to do so by any
4 person claiming to have an interest in any parcel of property in the
5 municipality. The notice shall be published and mailed by the
6 municipal clerk, or by such clerk or official as the planning board
7 shall otherwise designate. Failure to mail any such notice shall not
8 invalidate the investigation or determination thereon.

9 (4) At the hearing, which may be adjourned from time to time,
10 the planning board shall hear all persons who are interested in or
11 would be affected by a determination that the delineated area is a
12 redevelopment area. All objections to such a determination and
13 evidence in support of those objections, given orally or in writing,
14 shall be received and considered and made part of the public record.

15 (5) (a) After completing its hearing on this matter, the planning
16 board shall recommend that the delineated area, or any part thereof,
17 be determined, or not be determined, by the municipal governing
18 body to be a redevelopment area.

19 (b) After receiving the recommendation of the planning board,
20 the municipal governing body may adopt a resolution determining
21 that the delineated area, or any part thereof, is a redevelopment
22 area.

23 (c) Upon the adoption of a resolution, the clerk of the
24 municipality shall, forthwith, transmit a copy of the resolution to
25 the Commissioner of Community Affairs for review. If the area in
26 need of redevelopment is not situated in an area in which
27 development or redevelopment is to be encouraged pursuant to any
28 State law or regulation promulgated pursuant thereto, the
29 determination shall not take effect without first receiving the review
30 and the approval of the commissioner. If the commissioner does
31 not issue an approval or disapproval within 30 calendar days of
32 transmittal by the clerk, the determination shall be deemed to be
33 approved. If the area in need of redevelopment is situated in an
34 area in which development or redevelopment is to be encouraged
35 pursuant to any State law or regulation promulgated pursuant
36 thereto, then the determination shall take effect after the clerk has
37 transmitted a copy of the resolution to the commissioner. The
38 determination, if supported by substantial evidence and, if required,
39 approved by the commissioner, shall be binding and conclusive
40 upon all persons affected by the determination.

41 (d) Notice of the determination shall be served, within 10 days
42 after the determination, upon all record owners of property located
43 within the delineated area, those whose names are listed on the tax
44 assessor's records, and upon each person who filed a written
45 objection thereto and stated, in or upon the written submission, an
46 address to which notice of determination may be sent.

47 (e) If the governing body resolution assigning the investigation
48 to the planning board, pursuant to subsection a. of this section,

1 stated that the redevelopment determination shall establish a
2 Condemnation Redevelopment Area, the notice of the determination
3 required pursuant to subparagraph (d) of this paragraph shall
4 indicate that:

5 (i) the determination operates as a finding of public purpose and
6 authorizes the municipality to exercise the power of eminent
7 domain to acquire property in the redevelopment area, and

8 (ii) legal action to challenge the determination, must be
9 commenced within 45 days of receipt of notice and that failure to
10 do so shall preclude an owner from later raising such challenge.

11 (f) No municipality shall be authorized to exercise the power of
12 eminent domain to acquire property within a redevelopment area on
13 or after 90 days from the effective date of P.L. , c. (C.)
14 (pending before the Legislature as this bill) unless notice to
15 property owners within the redevelopment area was provided
16 pursuant to subparagraph (e) of this paragraph. This provision shall
17 not apply to property located within an area determined to be in
18 need of redevelopment prior to the effective date of P.L. ,
19 c. (C.) (pending before the Legislature as this bill).

20 (g) If a municipal governing body has determined an area to be
21 a Non-Condemnation Redevelopment Area and is unable to acquire
22 property that is necessary for the redevelopment project, the
23 municipality may initiate and follow the process set forth in this
24 section to determine whether the area or property is a
25 Condemnation Redevelopment Area. Such determination shall be
26 based upon the then-existing conditions and not based upon the
27 condition of the area or property at the time of the prior Non-
28 Condemnation Redevelopment Area determination.

29 (h) A property owner who has received notice pursuant to this
30 section who does not file a legal challenge to the redevelopment
31 determination affecting his or her property within 45 days of receipt
32 of such notice shall thereafter be barred from filing such a challenge
33 and, in the case of a Condemnation Redevelopment Area and upon
34 compliance with the notice provisions of subparagraph (e) of this
35 paragraph, shall further be barred from asserting a challenge to the
36 redevelopment determination as a defense in any condemnation
37 proceeding to acquire the property.

38 (6) **【If written objections were filed in connection with the**
39 **hearing the】** The municipality shall, for 45 days next following its
40 determination 【to which the objections were filed】, take no further
41 action to acquire any property by condemnation within the
42 redevelopment area.

43 (7) If **【a】** any person 【who filed a written objection to a
44 determination by the municipality pursuant to this subsection】
45 shall, within 45 days after the adoption by the municipality of the
46 determination 【to which the person objected】, apply to the Superior
47 Court, the court may grant further review of the determination by

1 procedure in lieu of prerogative writ; and in any such action the
2 court may make any incidental order that it deems proper.

3 c. An area determined to be in need of redevelopment pursuant
4 to this section shall be deemed to be a "blighted area" for the
5 purposes of Article VIII, Section III, paragraph 1 of the
6 Constitution. If an area is determined to be a redevelopment area
7 and a redevelopment plan is adopted for that area in accordance
8 with the provisions of this act, the municipality is authorized to
9 utilize all those powers provided in section 8 of P.L.1992, c.79
10 (C.40A:12A-8), except that a municipality may not acquire any land
11 or building by condemnation pursuant to subsection c. of that
12 section unless the municipality has complied with the provisions of
13 subparagraph (e) of paragraph (5) of subsection b. of this section.
14 (cf: P.L.2003, c.125, s.4)

15

16 3. Section 8 of P.L.1992, c.79 (C.40A:12A-8) is amended to
17 read as follows:

18 8. Upon the adoption of a redevelopment plan pursuant to
19 section 7 of P.L.1992, c.79 (C.40A:12A-7), the municipality or
20 redevelopment entity designated by the governing body may
21 proceed with the clearance, replanning, development and
22 redevelopment of the area designated in that plan. In order to carry
23 out and effectuate the purposes of this act and the terms of the
24 redevelopment plan, the municipality or designated redevelopment
25 entity may:

26 a. Undertake redevelopment projects, and for this purpose issue
27 bonds in accordance with the provisions of section 29 of P.L.1992,
28 c.79 (C.40A:12A-29).

29 b. Acquire property pursuant to subsection i. of section 22 of
30 P.L.1992, c.79 (C.40A:12A-22).

31 c. Acquire, by condemnation, any land or building which is
32 necessary for the redevelopment project, pursuant to the provisions
33 of the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et
34 seq.), provided it has complied with the notice requirements in
35 subparagraph (e) of paragraph (5) of subsection b. of section 6 of
36 P.L.1992, c.79 (40A:12A-6).

37 d. Clear any area owned or acquired and install, construct or
38 reconstruct streets, facilities, utilities, and site improvements
39 essential to the preparation of sites for use in accordance with the
40 redevelopment plan.

41 e. Prepare or arrange by contract for the provision of
42 professional services and the preparation of plans by registered
43 architects, licensed professional engineers or planners, or other
44 consultants for the carrying out of redevelopment projects.

45 f. Arrange or contract with public agencies or redevelopers for
46 the planning, replanning, construction, or undertaking of any
47 project or redevelopment work, or any part thereof; negotiate and
48 collect revenue from a redeveloper to defray the costs of the

1 redevelopment entity, including where applicable the costs incurred
2 in conjunction with bonds, notes or other obligations issued by the
3 redevelopment entity, and to secure payment of such revenue; as
4 part of any such arrangement or contract, provide for extension of
5 credit, or making of loans, to redevelopers to finance any project or
6 redevelopment work, or upon a finding that the project or
7 redevelopment work would not be undertaken but for the provision
8 of financial assistance, or would not be undertaken in its intended
9 scope without the provision of financial assistance, provide as part
10 of an arrangement or contract for capital grants to redevelopers; and
11 arrange or contract with public agencies or redevelopers for the
12 opening, grading or closing of streets, roads, roadways, alleys, or
13 other places or for the furnishing of facilities or for the acquisition
14 by such agency of property options or property rights or for the
15 furnishing of property or services in connection with a
16 redevelopment area.

17 g. Except with regard to property subject to the requirements of
18 P.L.2008, c.65 (C.40A:5-14.2 et al.), lease or convey property or
19 improvements to any other party pursuant to this section, without
20 public bidding and at such prices and upon such terms as it deems
21 reasonable, provided that the lease or conveyance is made in
22 conjunction with a redevelopment plan, notwithstanding the
23 provisions of any law, rule, or regulation to the contrary.

24 h. Enter upon any building or property in any redevelopment
25 area in order to conduct investigations or make surveys, sounding or
26 test borings necessary to carry out the purposes of this act.

27 i. Arrange or contract with a public agency for the relocation,
28 pursuant to the "Relocation Assistance Law of 1967," P.L.1967,
29 c.79 (C.52:31B-1 et seq.) and the "Relocation Assistance Act,"
30 P.L.1971, c.362 (C.20:4-1 et seq.), of residents, industry or
31 commerce displaced from a redevelopment area.

32 j. Make, consistent with the redevelopment plan: (1) plans for
33 carrying out a program of voluntary repair and rehabilitation of
34 buildings and improvements; and (2) plans for the enforcement of
35 laws, codes, and regulations relating to the use and occupancy of
36 buildings and improvements, and to the compulsory repair,
37 rehabilitation, demolition, or removal of buildings and
38 improvements.

39 k. Request that the planning board recommend and governing
40 body designate particular areas as being in need of redevelopment
41 or rehabilitation in accordance with the provisions of this act and
42 make recommendations for the redevelopment or rehabilitation of
43 such areas.

44 l. Study the recommendations of the planning board or
45 governing body for redevelopment of the area.

46 m. Publish and disseminate information concerning any
47 redevelopment area, plan or project.

48

1 n. Do all things necessary or convenient to carry out its powers.
2 (cf: P.L.2008, c.65, s.8)

3

4 4. Section 14 of P.L.1992, c.79 (C.40A:12A-14) is amended to
5 read as follows:

6 14. a. A delineated area may be determined to be in need of
7 rehabilitation if the governing body of the municipality determines
8 by resolution that a program of rehabilitation, as defined in section
9 3 of P.L.1992, c.79 (C.40A:12A-3), may be expected to prevent
10 further deterioration and promote the overall development of the
11 community; and that there exist in that area any of the following
12 conditions such that (1) a significant portion of structures therein
13 are in a deteriorated or substandard condition **【and】**; (2) more than
14 half of the housing stock in the delineated area is at least 50 years
15 old; (3) there is a **【continuing】** pattern of vacancy, abandonment or
16 underutilization of properties in the area**【, with】**; (4) there is a
17 persistent arrearage of property tax payments 【thereon or (2) more
18 than half of the housing stock in the delineated area is at least 50
19 years old,】 on properties in the area; (5) environmental
20 contamination is discouraging improvements and investment in
21 properties in the area; or (6) a majority of the water and sewer
22 infrastructure in the delineated area is at least 50 years old and is in
23 need of repair or substantial maintenance**【;** and (3) a program of
24 rehabilitation, as defined in section 3 of P.L.1992, c.79
25 (C.40A:12A-3), may be expected to prevent further deterioration
26 and promote the overall development of the community**】**. Where
27 warranted by consideration of the overall conditions and
28 requirements of the community, a finding of need for rehabilitation
29 may extend to the entire area of a municipality. Prior to adoption of
30 the resolution, the governing body shall submit it to the municipal
31 planning board for its review. Within 45 days of its receipt of the
32 proposed resolution, the municipal planning board shall submit its
33 recommendations regarding the proposed resolution, including any
34 modifications which it may recommend, to the governing body for
35 its consideration. Thereafter, or after the expiration of the 45 days
36 if the municipal planning board does not submit recommendations,
37 the governing body may adopt the resolution, with or without
38 modification. The resolution shall not become effective without the
39 approval of the commissioner pursuant to section 6 of P.L.1992,
40 c.79 (C.40A:12A-6), if otherwise required pursuant to that section.

41 b. A delineated area shall be deemed to have been determined
42 to be an area in need of rehabilitation in accordance with the
43 provisions of this act if it has heretofore been determined to be an
44 area in need of rehabilitation pursuant to P.L.1975, c.104 (C.54:4-
45 3.72 et seq.), P.L.1977, c.12 (C.54:4-3.95 et seq.) or P.L.1979,
46 c.233 (C.54:4-3.121 et al.).

1 c. (1) A municipality may adopt an ordinance declaring a
2 renovation housing project to be an area in need of rehabilitation for
3 the purposes of Article VIII, Section I, paragraph 6 of the New
4 Jersey Constitution if the need for renovation resulted from
5 conflagration.

6 (2) For the purposes of this subsection, "renovation housing
7 project" means any work or undertaking to provide a decent, safe,
8 and sanitary dwelling, to exclusively benefit a specific household,
9 by the renovation, reconstruction, or replacement of the household's
10 home on the same lot by either a charitable entity organized to
11 perform home renovations or by a for-profit builder using 75% or
12 more volunteer labor-hours to accomplish the construction for the
13 project. The undertaking may include any buildings; demolition,
14 clearance, or removal of buildings from land; equipment; facilities;
15 or other personal properties or interests therein which are necessary,
16 convenient, or desirable appurtenances of the undertaking.

17 d. (1) A municipality may adopt an ordinance declaring a
18 renovation housing project to be an area in need of rehabilitation for
19 the purposes of Article VIII, Section I, paragraph 6 of the New
20 Jersey Constitution if at least half of the number of people
21 occupying the dwelling as their primary residence qualify for a
22 federal income tax credit pursuant to 26 U.S.C. s.22 as a result of
23 being permanently and totally disabled and the improvements to be
24 made to the dwelling are made substantially to accommodate those
25 disabilities.

26 (2) For the purposes of this subsection, "renovation housing
27 project" means any work or undertaking to provide a decent, safe,
28 and sanitary single-family dwelling, to exclusively benefit at least
29 half of the number of people occupying a dwelling as their primary
30 residence, by the renovation, reconstruction, or replacement of that
31 dwelling on the same lot by either a charitable entity organized to
32 perform home renovations or by a for-profit builder using 75% or
33 more volunteer labor-hours to accomplish the construction for the
34 project. The undertaking may include any buildings; demolition,
35 clearance, or removal of buildings from land; equipment; facilities;
36 or other personal properties or interests therein which are necessary,
37 convenient, or desirable appurtenances of the undertaking.

38 (cf: P.L.2007, c.91, s.1)

39

40 5. Section 15 of P.L.1992, C.79 (40A:12A-15) is amended to
41 read as follows:

42 15. In accordance with the provisions of a redevelopment plan
43 adopted pursuant to section 7 of P.L.1992, c.79 (C.40A:12A-7), a
44 municipality or redevelopment entity may proceed with clearance,
45 replanning, conservation, development, redevelopment and
46 rehabilitation of an area in need of rehabilitation. With respect to a
47 redevelopment project in an area in need of rehabilitation, the
48 municipality or redevelopment entity, upon the adoption of a

1 redevelopment plan for the area, may perform any of the actions set
2 forth in section 8 of P.L.1992, c.79 (C.40A:12A-8), except that with
3 respect to such a project the municipality shall not have the power
4 to take or acquire private property by condemnation in furtherance
5 of a redevelopment plan, unless: a. the area is within an area
6 determined to be in **need of redevelopment pursuant to this act** a
7 Condemnation Redevelopment Area and the municipality has
8 complied with the notice requirements under subparagraph (e) of
9 paragraph (5) of subsection b. of section 6 of P.L.1992, c.79
10 (40A:12A-6); or b. exercise of that power is authorized under any
11 other law of this State.
12 (cf: P.L.1992, c.79, s.15)

13

14 6. This act shall take effect immediately.

15

16

17

STATEMENT

18

19 This bill would amend the "Local Redevelopment and Housing
20 Law," ("LRHL") to incorporate the holding of the New Jersey
21 Supreme Court in Gallenthin v. Paulsboro, 191 N.J. 344 (2007),
22 which clarified one of the statutory criteria that must exist in order
23 for an area to be determined in need of redevelopment and
24 emphasized that the use of eminent domain cannot be justified to
25 acquire property solely upon the basis that it is underutilized, unless
26 the property otherwise meets the criteria for blight.

27 The bill would also amend the LRHL to address the due process
28 concerns raised in the Appellate Division decision Harrison
29 Redevelopment Agency v. DeRose, 398 N.J. Super. 361 (App. Div.
30 2008) concerning the adequacy of notice to property owners that a
31 redevelopment area determination authorizes the taking of property
32 by condemnation. The bill would enhance the LRHL notice
33 provisions to require municipalities to advise property owners
34 within a proposed redevelopment area of the municipality's
35 intention to use or not use eminent domain to facilitate a
36 redevelopment plan at the outset of the investigation as well as
37 providing specific notice of such designation. Unless a
38 municipality notifies owners of property located in a proposed
39 redevelopment area that the designation will allow the municipality
40 to take property located in the area by eminent domain, the LRHL
41 will not authorize the use of eminent domain.

42 The bill would also authorize municipalities that intend to
43 implement redevelopment initiatives without using eminent domain
44 to do so but to still take advantage of the other tools available under
45 the LRHL that encourage and facilitate economic development
46 activities, create job opportunities, increase commerce, and enhance
47 ratable values within their communities during these difficult
48 economic times.

SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 2447

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 4, 2013

The Senate Community and Urban Affairs Committee reports favorably and with committee amendments Senate Bill No. 2447.

As amended by the committee, this bill would amend the "Local Redevelopment and Housing Law," ("LRHL") to incorporate the holding of the New Jersey Supreme Court in Gallenthin v. Paulsboro, 191 N.J. 344 (2007), which clarified one of the statutory criteria that must exist in order for an area to be determined in need of redevelopment and emphasized that the use of eminent domain cannot be justified to acquire property solely upon the basis that it is underutilized, unless the property otherwise meets the criteria for blight.

The bill would also amend the LRHL to address the due process concerns raised in the Appellate Division decision Harrison Redevelopment Agency v. DeRose, 398 N.J. Super. 361 (App. Div. 2008) concerning the adequacy of notice to property owners that a redevelopment area determination authorizes the taking of property by condemnation. The bill would enhance the LRHL notice provisions by requiring municipalities to advise property owners within a proposed redevelopment area of the municipality's intention to use or not use eminent domain to facilitate a redevelopment plan at the outset of the investigation and provide specific notice of such designation. Unless a municipality notifies owners of property located in a proposed redevelopment area that the designation will allow the municipality to take property located in the area by eminent domain, the municipality will not be authorized to condemn property in the designated area for redevelopment purposes.

The bill would also authorize municipalities that intend to implement redevelopment initiatives, without using eminent domain, to do so but to still take advantage of the other tools available under the LRHL that encourage and facilitate economic development activities, create job opportunities, increase commerce, and enhance ratable values within their communities during these difficult economic times.

The bill would also establish greater flexibility for a governing body to determine a delineated area as an area in need of rehabilitation.

COMMITTEE AMENDMENTS

The committee amended the bill to clarify that the bill will prohibit municipalities and redevelopment entities from exercising the power of eminent domain to acquire property for redevelopment purposes within a Non-Condensation Redevelopment Area. The amendments also clarify that the bill does not prohibit a municipality or redevelopment entity from condemning property that is located an area that was determined to be in need of redevelopment prior to the effective date of the bill. The amendments also clarify that the enhanced notice provisions established by the bill will apply prospectively but will allow redevelopment area determinations to proceed under current law if they are adopted within 90 days following enactment.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2447

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 3, 2013

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2447 (1R), with committee amendments.

As amended, this bill amends the “Local Redevelopment and Housing Law,” (“LRHL”) P.L.1992, c.79 (C.40A:12A-1 et al.) to incorporate the holding of the New Jersey Supreme Court in Gallenthin v. Paulsboro, 191 N.J. 344 (2007), which clarified one of the statutory criteria that must exist in order for an area to be determined in need of redevelopment and emphasized that the use of eminent domain cannot be justified to acquire property solely upon the basis that it is underutilized, unless the property otherwise meets the criteria for blight.

The bill also amends the LRHL to address the due process concerns raised in the Appellate Division decision Harrison Redevelopment Agency v. DeRose, 398 N.J. Super. 361 (App. Div. 2008) concerning the adequacy of notice to property owners that a redevelopment area determination authorizes the taking of property by condemnation. This bill amends the LRHL notice provision to require municipalities to advise property owners within a proposed redevelopment area of the municipality’s intention to either use or not use eminent domain to facilitate a redevelopment plan at the outset of the investigation as well as providing specific notice of such designation. Unless a municipality notifies owners of properties located in a proposed redevelopment area that the designation will allow the municipality to take property located in the area by eminent domain, the municipality will not be authorized to condemn property in the designated area for redevelopment purposes.

The bill also authorizes municipalities to implement redevelopment initiatives, without using eminent domain, while taking advantage of the other tools available under the LRHL. Municipalities and property owners would be also permitted to enter into standstill agreements in order to defer litigation to a future point in order to forestall costly litigation, which may not be necessary if eminent domain is not utilized. Finally, this bill establishes greater flexibility

for a governing body to determine a delineated area as an area of need of rehabilitation.

As amended and reported, this bill is identical to Assembly Bill No. 3615 (2R), as also reported by the committee.

COMMITTEE AMENDMENTS:

The committee amendments clearly indicate in preamble of the bill that it is in the public interest to establish certainty and repose with respect to the designation of redevelopment areas that authorize a municipality to exercise the power of eminent domain, after the time to challenge the designation has expired. The committee amendments also allow municipalities and property owners to enter into standstill agreements in order to defer litigation to a future point in order to forestall costly litigation, which may not be necessary if eminent domain is not utilized.

FISCAL IMPACT:

The Office of Legislative Services (OLS) has determined that the bill would have an indeterminate fiscal impact on local redevelopment entities. If a local redevelopment entity designates an area as a “Condemnation Redevelopment Area,” it may have to provide for additional expenditures related to the printing and mailing of certain public notices required to be provided to the owners of property within each area. The OLS notes that the bill requires a property owner to file a legal challenge to a redevelopment determination affecting his or her property within 45 days of receipt of notice that the property is in a “Condemnation Redevelopment Area.” To the extent that the new limit reduces the number of legal challenges, local redevelopment entities may experience a reduction in litigation costs. Finally, local redevelopment entities may incur new costs associated with a preliminary investigation to determine whether property in a “Non-Condemnation Redevelopment Area” should be reclassified to a “Condemnation Redevelopment Area.”

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE, No. 2447

STATE OF NEW JERSEY 215th LEGISLATURE

DATED: JUNE 10, 2013

SUMMARY

- Synopsis:** Codifies protections set forth in certain case law and limits use of eminent domain under the “Local Redevelopment and Housing Law.”
- Type of Impact:** Indeterminate impact on local finances.
- Agencies Affected:** Local redevelopment entities.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
Local Cost	Indeterminate Fiscal Impact – See comments below		

- Local redevelopment entities may incur additional expenses associated with the printing and mailing of notices to the owners of properties in a “Condemnation Redevelopment Area.” A municipality may be a “local redevelopment entity.”
- To the extent that the new limit on the amount of time property owners have to file a legal challenge to a redevelopment determination reduces the number of such challenges, local redevelopment entities may experience a reduction in litigation costs.
- Local redevelopment entities may incur new costs associated with a preliminary investigation to determine whether property in a “Non-Condemnation Redevelopment Area” should be reclassified to a “Condemnation Redevelopment Area.”

BILL DESCRIPTION

Senate Bill No. 2447 (2R) of 2013 would amend the “Local Redevelopment and Housing Law,” (“LRHL”) P.L.1992, c.79 (C.40A:12A-1 et seq.) to incorporate the holding of the New Jersey Supreme Court in Gallenthin v. Paulsboro, 191 N.J. 344 (2007), which both clarified one of the statutory criteria that must exist in order for an area to be determined in need of

redevelopment and emphasized that the use of eminent domain cannot be justified to acquire property solely upon the basis that it is underutilized, unless the property otherwise meets the criteria for blight.

The bill would also amend the LRHL to address the due process concerns raised in the Appellate Division decision in Harrison Redevelopment Agency v. DeRose, 398 N.J. Super. 361 (App. Div. 2008) concerning the adequacy of notice to property owners that a development area determination authorizes the taking of property by condemnation. This legislation amends the LRHL notice provision to require municipalities to advise property owners within a proposed redevelopment area of the municipality's intention to either use or not use eminent domain to facilitate a redevelopment plan at the outset of the investigation as well as providing specific notice of such designation. Unless a municipality notifies owners of properties located in a proposed redevelopment area that the designation will allow the municipality to take property located in the area by eminent domain, the municipality will not be authorized to condemn property in the designated area for redevelopment purposes.

The bill also authorizes municipalities to implement redevelopment initiatives, without using eminent domain, while taking advantage of the other tools available under the LRHL. Municipalities and property owners also would be permitted to enter into standstill agreements in order to defer litigation to a future point in order to forestall costly litigation, which may not be necessary if eminent domain is not utilized. Finally, this bill establishes greater flexibility for a governing body to determine that a delineated area is an area in need of rehabilitation.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office Legislative Services (OLS) has determined that the enactment of Senate Bill No. 2447 (2R) would have an indeterminate fiscal impact on local redevelopment entities. If a local redevelopment entity designates an area as a "Condemnation Redevelopment Area," it may have to provide for additional expenditures related to the printing and mailing of certain public notices required to be provided to the owners of property within each area. The OLS notes that the bill requires a property owner to file a legal challenge to a redevelopment determination affecting his or her property within 45 days of receipt of notice that the property is within a "Condemnation Redevelopment Area." To the extent that the new time limit reduces the number of legal challenges, local redevelopment entities may experience a reduction in litigation costs. Finally, local redevelopment entities may incur new costs associated with a preliminary investigation to determine whether property in a "Non-Condemnation Redevelopment Area" should be reclassified as being situated in a "Condemnation Redevelopment Area."

Section: Local Government

*Analyst: Scott A. Brodsky
Senior Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).