

48:12-35.1

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2007 **CHAPTER:** 290

NJSA: 48:12-35.1 (Revises procedures for condemnation of certain property and use of the power of eminent domain by railroads)

BILL NO: S2743 (Substituted for A4625)

SPONSOR(S): Doria and others

DATE INTRODUCED: May 24, 2007

COMMITTEE: **ASSEMBLY:** Judiciary
SENATE: Transportation

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** January 7, 2008
SENATE: June 21, 2007

DATE OF APPROVAL: January 13, 2008

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (First reprint enacted)

S2743

[SPONSOR'S STATEMENT](#): (Begins on page 3 of original bill) [Yes](#)

COMMITTEE STATEMENT: [ASSEMBLY:](#) [Yes](#)

[SENATE:](#) [Yes](#)

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

A4625

[SPONSOR'S STATEMENT](#): (Begins on page 4 of original bill) [Yes](#)

COMMITTEE STATEMENT: [ASSEMBLY:](#) [Yes](#)

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

LAW/IS 6/13/08

P.L. 2007, CHAPTER 290, *approved January 13, 2008*
Senate, No. 2743 (*First Reprint*)

1 AN ACT concerning the powers of condemnation and eminent
2 domain, and amending P.L.1962, c.198.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 60 of P.L.1962, c.198 (C.48:12-35.1) is amended to
8 read as follows:

9 60. Any railroad utility incorporated in this State or in any other
10 State and operating in New Jersey may exercise the power of
11 eminent domain as provided ¹**[in sections 48 and 49 [hereof] of**
12 **P.L.1962, c.198 (C.48:3-17.6 and 48:3-17.7)]** herein¹ in taking: (a)
13 any land and property required for the right-of-way of its main line
14 and branches, not exceeding 200 feet in width, unless more shall be
15 required for slopes of cuts or embankments or retaining walls[,
16 and]; (b) all such other land and property adjoining such right-of-
17 way as exigencies of business may demand for the erection or
18 expansion of freight and passenger depots and all other railroad
19 purposes, provided, however, that any railroad utility exercising
20 condemnation for this purpose must demonstrate to the ¹**[board]**
21 Department of Transportation¹ that alternative property suitable for
22 the specific proposed use of the property to be taken is unavailable,
23 either through on-site accommodation or through voluntary sale of
24 alternative, reasonably situated property, and that the interest in the
25 property to be taken does not exceed what is necessary for the
26 proposed use, and shall also demonstrate to the ¹**[board]**
27 Department of Transportation¹ at ¹**[a public] an informal¹ hearing**
28 the specific use to be made of the land or other property or interest
29 to be acquired and that such proposed use is necessary and
30 consistent with the purposes enumerated for such railroad utility
31 and with the extent of the land or other property or interest to be
32 condemned; and (c) any land and property necessary to comply with
33 any order ¹, determination, rule or regulation¹ of the ¹**[Board of**
34 **Public [Utility Commissioners] Utilities] Department of**
35 **Transportation¹.**

36 ¹Thereafter, the application for approval shall be considered a
37 contested case pursuant to the “Administrative Procedure Act,” P.L.
38 1968, c.410 (C. 52:14B-1 et seq.). A hearing, upon the written
39 request by the railroad utility to condemn and challenge thereto,
40 shall be heard by the Office of Administrative Law pursuant to
41 section 9 of P.L.1968, c. 410 (C. 52:14B-9), after the informal
42 hearing is completed before the Department of Transportation.
43 Timely notice by the railroad utility must be provided to a

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:

¹Senate STR committee amendments adopted June 14, 2007.

1 prospective condemnee holding a fee interest, easement, or
2 leasehold in the property sought to be condemned by the railroad
3 utility.

4 At the hearing held before the Office of Administrative Law, the
5 railroad utility shall make the same demonstrations of satisfying the
6 prescribed conditions as set forth above. The burden of proof shall
7 be upon the railroad utility no matter who makes the request for a
8 formal hearing. The Office of Administrative Law shall then make
9 a recommendation to the Commissioner of Transportation as to
10 whether the railroad utility has met its statutory obligations to
11 enable it to file a condemnation proceeding to acquire real property
12 and that a determination of necessity should be issued. The
13 determination shall become final on the 45th day after the release of
14 the initial determination of necessity by the Department of
15 Transportation, unless the railroad utility or any other interested
16 party whose real property, lease, or easement may be impacted by
17 the condemnation seeks, in writing, from the Department of
18 Transportation a formal hearing before the Office of Administrative
19 Law within that 45 day period. Any appeal of a final determination
20 made by the Department of Transportation or by the Commissioner
21 of Transportation shall be made to the Superior Court, Appellate
22 Division based upon the record below. No informal or formal
23 hearing shall be held until written notice by certified mail or by
24 private courier has been demonstrated as being sent by the railroad
25 utility to anyone holding an interest in the real estate to be acquired
26 whether in fee, easement, or by lease at their current known
27 address, and if not known by publication based upon production of
28 a certification of inquiry, as well as to the municipality, municipal
29 planning board and the county and county planning board where the
30 property is located.¹

31 In addition, any railroad utility shall have the right to take and
32 acquire, by the exercise of the power of eminent domain as
33 provided in ¹~~sections 48 and 49 [hereof] of P.L.1962, c.198]~~ this
34 section and the “Eminent Domain Act of 1971,” P.L. 1971,c. 361
35 (C.20:3-1 et seq.)¹, any land, property or private road as shall be
36 necessary for any branch line or lines, spur or sidetrack to the
37 premises of a horse race track as provided in ~~[section] R.S.48:12-~~
38 ~~32.1, but not in excess of 200 feet in width, for such branch line or~~
39 ~~lines, spur or sidetrack of railroad; provided that additional land~~
40 ~~may be so acquired where necessary for the slopes of cuts or~~
41 ~~embankments or for retaining walls.~~

42 When the line of any railroad utility of the State is constructed to
43 the Delaware river and extension of such line is to be undertaken
44 pursuant to ~~[section] R.S.48:12-44,~~ the utility may acquire, by the
45 exercise of the power of eminent domain as provided in ¹~~sections~~
46 ~~48 and 49 [hereof] of P.L.1962, c.198]~~ this section¹, such lands as
47 may be necessary upon filing and recording the survey of the route

1 with the Secretary of State and in the office of the clerk of the
2 county wherein the lands are situate, and making the deposit
3 required by **[section] R.S.48:12-25 [of this Title]**.

4 No railroad utility shall take, use or occupy by condemnation any
5 franchise, land or located route of any other railroad or any utility
6 chartered for the purpose of facilitating transportation, except for
7 the purpose of crossing such land or route and except the land of
8 any such utility not necessary for the purpose of its franchise. ¹No
9 railroad utility shall take or acquire by condemnation any land,
10 property, easements, or other interest belonging to the State of New
11 Jersey, or any authority, corporation, or other instrumentality of the
12 State.

13 The Department of Transportation and its commissioner are
14 hereby authorized and empowered to determine the necessity as
15 aforesaid for the use of the land, easements, or other property or
16 interests therein so sought to be condemned, to establish the form
17 and method of any application for such condemnation and the time
18 and the manner of notice of the application and scheduling of the
19 initial informal hearing or any hearing before the Office of
20 Administrative Law, and to enforce the provisions of this section
21 the commissioner may designate a division or office of the
22 department to make the determination of necessity. The
23 Commissioner of Transportation may prescribe any rules,
24 regulation, or procedure applicable to an application by a railroad
25 utility to commence a condemnation proceeding including, but not
26 limited to, how the railroad utility shall demonstrate its satisfaction
27 of the above stated conditions for commencing a condemnation
28 proceeding; to any challenge made by a prospective condemnee
29 holding fee interest, easement, or lease in the property sought to be
30 condemned by the railroad utility; and to the provision of notice to
31 interested parties. The New Jersey Transit Corporation shall not be
32 considered a railroad utility for the purposes of this section.¹

33 ¹**[Nothing herein shall be deemed to limit the]** The¹ powers of
34 condemnation vested in railroads under ¹this section shall govern
35 over¹ any provisions of Title 48 as amended and supplemented by
36 this act and which have not been repealed.

37 (cf: P.L.1967, c.155, s.1)

38
39 2. This act shall take effect immediately.

40
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42
43

44 Revises procedures for condemnation of certain property and use
45 of the power of eminent domain by railroads.

SENATE, No. 2743

STATE OF NEW JERSEY
212th LEGISLATURE

INTRODUCED MAY 24, 2007

Sponsored by:
Senator JOSEPH V. DORIA, JR.
District 31 (Hudson)

SYNOPSIS

Revises procedures for condemnation of certain property and use of the power of eminent domain by railroads.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the powers of condemnation and eminent
2 domain, and amending P.L.1962, c.198.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 60 of P.L.1962, c.198 (C.48:12-35.1) is amended to
8 read as follows:

9 60. Any railroad utility incorporated in this State or in any other
10 State and operating in New Jersey may exercise the power of
11 eminent domain as provided in sections 48 and 49 **[hereof]** of
12 P.L.1962, c.198 (C.48:3-17.6 and 48:3-17.7) in taking: (a) any land
13 and property required for the right-of-way of its main line and
14 branches, not exceeding 200 feet in width, unless more shall be
15 required for slopes of cuts or embankments or retaining walls[,
16 and]; (b) all such other land and property adjoining such right-of-
17 way as exigencies of business may demand for the erection or
18 expansion of freight and passenger depots and all other railroad
19 purposes, provided, however, that any railroad utility exercising
20 condemnation for this purpose must demonstrate to the board that
21 alternative property suitable for the specific proposed use of the
22 property to be taken is unavailable, either through on-site
23 accommodation or through voluntary sale of alternative, reasonably
24 situated property, and that the interest in the property to be taken
25 does not exceed what is necessary for the proposed use, and shall
26 also demonstrate to the board at a public hearing the specific use to
27 be made of the land or other property or interest to be acquired and
28 that such proposed use is necessary and consistent with the
29 purposes enumerated for such railroad utility and with the extent of
30 the land or other property or interest to be condemned; and (c) any
31 land and property necessary to comply with any order of the Board
32 of Public **[Utility Commissioners]** Utilities.

33 In addition, any railroad utility shall have the right to take and
34 acquire, by the exercise of the power of eminent domain as
35 provided in sections 48 and 49 **[hereof]** of P.L.1962, c.198, any
36 land, property or private road as shall be necessary for any branch
37 line or lines, spur or sidetrack to the premises of a horse race track
38 as provided in **[section]** R.S.48:12-32.1, but not in excess of 200
39 feet in width, for such branch line or lines, spur or sidetrack of
40 railroad; provided that additional land may be so acquired where
41 necessary for the slopes of cuts or embankments or for retaining
42 walls.

43 When the line of any railroad utility of the State is constructed to
44 the Delaware river and extension of such line is to be undertaken

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 pursuant to [section] R.S.48:12-44, the utility may acquire, by the
2 exercise of the power of eminent domain as provided in sections 48
3 and 49 [hereof] of P.L.1962, c.198, such lands as may be necessary
4 upon filing and recording the survey of the route with the Secretary
5 of State and in the office of the clerk of the county wherein the
6 lands are situate, and making the deposit required by [section]
7 R.S.48:12-25 [of this Title].

8 No railroad utility shall take, use or occupy by condemnation any
9 franchise, land or located route of any other railroad or any utility
10 chartered for the purpose of facilitating transportation, except for
11 the purpose of crossing such land or route and except the land of
12 any such utility not necessary for the purpose of its franchise.

13 Nothing herein shall be deemed to limit the powers of
14 condemnation vested in railroads under any provisions of Title 48
15 as amended and supplemented by this act and which have not been
16 repealed.

17 (cf: P.L.1967, c.155, s.1)

18

19 2. This act shall take effect immediately.

20

21

22

STATEMENT

23

24 This bill clarifies the rights of property owners faced with a
25 threat of condemnation by a railroad.

26 In its present form, section 60 of P.L.1962, c.198 (C.48:12-35.1),
27 spells out a railroad's rights and obligations when it seeks to
28 exercise condemnation of private property for railroad purposes.
29 Railroads cannot use the power of eminent domain simply for their
30 own convenience in expanding their operations. Condemnation by
31 a railroad should be reserved only for those instances when the
32 subject property or interest therein is needed because the railroad
33 has no other alternatives, such as increasing efficiencies at its
34 existing facility, or acquiring other property through voluntary sale.
35 Additionally, in order to further avoid negative impacts on private
36 property owners, a railroad should not condemn a greater interest in
37 the private property than what is actually required to satisfy a
38 specific railroad need.

39 This bill clarifies the property owners' rights by requiring a
40 railroad to specifically demonstrate, when seeking permission to
41 condemn private property adjoining the railroad's right-of-way, its
42 need of that private property for a legitimate railroad purpose, that
43 no alternatives to condemnation are available, that the railroad is
44 not seeking to acquire a greater interest in property than is needed
45 to fulfill a legitimate railroad purpose, and that the condemnation
46 would not unnecessarily deprive a property owner of its entire
47 interest in its property.

S2743 DORIA

4

1 It is the intent of the sponsor that clarifying the current statute
2 will protect property owners from unnecessary acquisition by
3 eminent domain, while maintaining the right of railroads to petition
4 to invoke condemnation. To effectuate this purpose, it is the intent
5 of this bill to amend section 60 of P.L.1962, c.198 (C.48:12-35.1),
6 by clarifying the statutory elements that a railroad utility seeking to
7 condemn private property must satisfy. The bill clearly sets forth
8 the obligations of a railroad when it seeks to condemn private
9 property adjoining its right-of-way and guarantees the property
10 owner the right to raise defenses ordinarily available in
11 condemnation, and to demonstrate through relevant means that the
12 railroad has not satisfied the requirements of the statute.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2743

STATE OF NEW JERSEY

DATED: JANUARY 3, 2008

The Assembly Judiciary Committee reports favorably Senate Bill No.2743 (1R).

This bill clarifies the rights of property owners when faced with condemnation by a railroad utility by providing that the railroad must demonstrate to the Department of Transportation (“DOT”) that alternative property is unavailable and that the interest to be taken does not exceed that which is necessary for the proposed use. In addition, the railroad must also initially demonstrate to the DOT at an informal public hearing the specific use to be made of the property or interest to be acquired and that the proposed use is necessary and consistent with the railroad utility's purposes and with the extent of the property or interest to be acquired and any land or property necessary to comply with any order, determination, rule, or regulation of the DOT.

The application for approval shall be considered a “contested case” under the “Administrative Procedure Act.” A formal hearing may be held by the Office of Administrative Law. The burden of proof shall be on the railroad utility. The proceedings are to be conducted in accordance with procedures specified or provided in the bill. No railroad utility shall condemn property or interests belonging to the State of New Jersey, or any authority, corporation, or instrumentality of the State.

This bill is identical to Assembly Bill No. 4625.

SENATE TRANSPORTATION COMMITTEE

STATEMENT TO

SENATE, No. 2743

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 14, 2007

The Senate Transportation Committee reports favorably Senate Bill No. 2743 with committee amendments.

This amended bill clarifies the rights of property owners when faced with condemnation by a railroad utility by providing that the railroad must demonstrate to the Department of Transportation (“DOT”) that alternative property is unavailable and that the interest to be taken does not exceed that which is necessary for the proposed use. In addition, the railroad must also initially demonstrate to the DOT at an informal public hearing the specific use to be made of the property or interest to be acquired and that the proposed use is necessary and consistent with the railroad utility's purposes and with the extent of the property or interest to be acquired and any land or property necessary to comply with any order, determination, rule, or regulation of the DOT.

The application for approval shall be considered a “contested case” under the “Administrative Procedure Act.” A formal hearing may be held by the Office of Administrative Law. The burden of proof shall be on the railroad utility. The proceedings are to be conducted in accordance with procedures specified or provided in the bill. No railroad utility shall condemn property or interests belonging to the State of New Jersey, or any authority, corporation, or instrumentality of the State.

The committee amended the bill to provide that the Department of Transportation rather than the Board of Public Utilities would conduct the informal hearing and take other actions under the bill, in recognition that under Executive Reorganization Plan of 1978 responsibility for regulating railroad utilities has been transferred to DOT. The amendments also specify that the matter shall be considered a “contested case” and a formal hearing thereon may be held by the Office of Administrative Law (OAL). The amendments provide for various procedures to be followed by OAL, the DOT, and the railroad utilities during the proceedings. The amendments preclude the taking of State property or interests or the property or interests of any State authority, corporation, or instrumentality by a

railroad. Finally, the amendments provide that NJ Transit is not to be considered a railroad utility for the purposes of this section.

ASSEMBLY, No. 4625

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED DECEMBER 10, 2007

Sponsored by:

Assemblyman LOUIS M. MANZO
District 31 (Hudson)

Co-Sponsored by:

Assemblyman Diegnan

SYNOPSIS

Revises procedures for condemnation of certain property and use of the power of eminent domain by railroads.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/8/2008)

1 AN ACT concerning the powers of condemnation and eminent
2 domain, and amending P.L.1962, c.198.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 60 of P.L.1962, c.198 (C.48:12-35.1) is amended to
8 read as follows:

9 60. Any railroad utility incorporated in this State or in any other
10 State and operating in New Jersey may exercise the power of
11 eminent domain as provided **[in sections 48 and 49 hereof]** herein
12 in taking: (a) any land and property required for the right-of-way of
13 its main line and branches, not exceeding 200 feet in width, unless
14 more shall be required for slopes of cuts or embankments or
15 retaining walls**[, and]**; (b) all such other land and property
16 adjoining such right-of-way as exigencies of business may demand
17 for the erection or expansion of freight and passenger depots and all
18 other railroad purposes, provided, however, that any railroad utility
19 exercising condemnation for this purpose must demonstrate to the
20 Department of Transportation that alternative property suitable for
21 the specific proposed use of the property to be taken is unavailable,
22 either through on-site accommodation or through voluntary sale of
23 alternative, reasonably situated property, and that the interest in the
24 property to be taken does not exceed what is necessary for the
25 proposed use, and shall also demonstrate to the Department of
26 Transportation at an informal hearing the specific use to be made of
27 the land or other property or interest to be acquired and that such
28 proposed use is necessary and consistent with the purposes
29 enumerated for such railroad utility and with the extent of the land
30 or other property or interest to be condemned; and (c) any land and
31 property necessary to comply with any order, determination, rule or
32 regulation of the **[Board of Public Utility Commissioners]**
33 Department of Transportation.

34 Thereafter, the application for approval shall be considered a
35 contested case pursuant to the "Administrative Procedure Act," P.L.
36 1968, c.410 (C. 52:14B-1 et seq.). A hearing, upon the written
37 request by the railroad utility to condemn and challenge thereto,
38 shall be heard by the Office of Administrative Law pursuant to
39 section 9 of P.L.1968, c. 410 (C. 52:14B-9), after the informal
40 hearing is completed before the Department of Transportation.
41 Timely notice by the railroad utility must be provided to a
42 prospective condemnee holding a fee interest, easement, or
43 leasehold in the property sought to be condemned by the railroad
44 utility.

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 At the hearing held before the Office of Administrative Law, the
2 railroad utility shall make the same demonstrations of satisfying the
3 prescribed conditions as set forth above. The burden of proof shall
4 be upon the railroad utility no matter who makes the request for a
5 formal hearing. The Office of Administrative Law shall then make
6 a recommendation to the Commissioner of Transportation as to
7 whether the railroad utility has met its statutory obligations to
8 enable it to file a condemnation proceeding to acquire real property
9 and that a determination of necessity should be issued. The
10 determination shall become final on the 45th day after the release of
11 the initial determination of necessity by the Department of
12 Transportation, unless the railroad utility or any other interested
13 party whose real property, lease, or easement may be impacted by
14 the condemnation seeks, in writing, from the Department of
15 Transportation a formal hearing before the Office of Administrative
16 Law within that 45 day period. Any appeal of a final determination
17 made by the Department of Transportation or by the Commissioner
18 of Transportation shall be made to the Superior Court, Appellate
19 Division based upon the record below. No informal or formal
20 hearing shall be held until written notice by certified mail or by
21 private courier has been demonstrated as being sent by the railroad
22 utility to anyone holding an interest in the real estate to be acquired
23 whether in fee, easement, or by lease at their current known
24 address, and if not known by publication based upon production of
25 a certification of inquiry, as well as to the municipality, municipal
26 planning board and the county and county planning board where the
27 property is located.

28 In addition, any railroad utility shall have the right to take and
29 acquire, by the exercise of the power of eminent domain as
30 provided in **【sections 48 and 49 hereof】** this section and the
31 “Eminent Domain Act of 1971,” P.L. 1971,c. 361 (C.20:3-1 et seq.),
32 any land, property or private road as shall be necessary for any
33 branch line or lines, spur or sidetrack to the premises of a horse race
34 track as provided in **【section】** R.S.48:12-32.1, but not in excess of
35 200 feet in width, for such branch line or lines, spur or sidetrack of
36 railroad; provided that additional land may be so acquired where
37 necessary for the slopes of cuts or embankments or for retaining
38 walls.

39 When the line of any railroad utility of the State is constructed to
40 the Delaware river and extension of such line is to be undertaken
41 pursuant to **【section】** R.S.48:12-44, the utility may acquire, by the
42 exercise of the power of eminent domain as provided in **【sections**
43 **48 and 49 hereof】** this section, such lands as may be necessary upon
44 filing and recording the survey of the route with the Secretary of
45 State and in the office of the clerk of the county wherein the lands
46 are situate, and making the deposit required by **【section】**
47 R.S.48:12-25 **【of this Title】**.

1 No railroad utility shall take, use or occupy by condemnation any
2 franchise, land or located route of any other railroad or any utility
3 chartered for the purpose of facilitating transportation, except for
4 the purpose of crossing such land or route and except the land of
5 any such utility not necessary for the purpose of its franchise. No
6 railroad utility shall take or acquire by condemnation any land,
7 property, easements, or other interest belonging to the State of New
8 Jersey, or any authority, corporation, or other instrumentality of the
9 State.

10 The Department of Transportation and its commissioner are
11 hereby authorized and empowered to determine the necessity as
12 aforsaid for the use of the land, easements, or other property or
13 interests therein so sought to be condemned, to establish the form
14 and method of any application for such condemnation and the time
15 and the manner of notice of the application and scheduling of the
16 initial informal hearing or any hearing before the Office of
17 Administrative Law, and to enforce the provisions of this section
18 the commissioner may designate a division or office of the
19 department to make the determination of necessity. The
20 Commissioner of Transportation may prescribe any rules,
21 regulation, or procedure applicable to an application by a railroad
22 utility to commence a condemnation proceeding including, but not
23 limited to, how the railroad utility shall demonstrate its satisfaction
24 of the above stated conditions for commencing a condemnation
25 proceeding; to any challenge made by a prospective condemnee
26 holding fee interest, easement, or lease in the property sought to be
27 condemned by the railroad utility; and to the provision of notice to
28 interested parties. The New Jersey Transit Corporation shall not be
29 considered a railroad utility for the purposes of this section.

30 **【Nothing herein shall be deemed to limit the】** The powers of
31 condemnation vested in railroads under this section shall govern
32 over any provisions of Title 48 as amended and supplemented by
33 this act and which have not been repealed.

34 (cf: P.L.1967, c.155, s.1)

35

36 2. This act shall take effect immediately.

37

38

39

STATEMENT

40

41 This bill clarifies the rights of property owners when faced with
42 condemnation by a railroad utility by providing that the railroad
43 must demonstrate to the Department of Transportation (“DOT”) that
44 alternative property is unavailable and that the interest to be taken
45 does not exceed that which is necessary for the proposed use. In
46 addition, the railroad must also initially demonstrate to the DOT at
47 an informal public hearing the specific use to be made of the
48 property or interest to be acquired and that the proposed use is

1 necessary and consistent with the railroad utility's purposes and
2 with the extent of the property or interest to be acquired and any
3 land or property necessary to comply with any order, determination,
4 rule, or regulation of the DOT.

5 The application for approval shall be considered a “contested
6 case” under the “Administrative Procedure Act.” A formal hearing
7 may be held by the Office of Administrative Law. The burden of
8 proof shall be on the railroad utility. The proceedings are to be
9 conducted in accordance with procedures specified or provided in
10 the bill. No railroad utility shall condemn property or interests
11 belonging to the State of New Jersey, or any authority, corporation,
12 or instrumentality of the State.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4625

STATE OF NEW JERSEY

DATED: JANUARY 3, 2008

The Assembly Judiciary Committee reports favorably Assembly Bill No.4625.

This bill clarifies the rights of property owners when faced with condemnation by a railroad utility by providing that the railroad must demonstrate to the Department of Transportation (“DOT”) that alternative property is unavailable and that the interest to be taken does not exceed that which is necessary for the proposed use. In addition, the railroad must also initially demonstrate to the DOT at an informal public hearing the specific use to be made of the property or interest to be acquired and that the proposed use is necessary and consistent with the railroad utility's purposes and with the extent of the property or interest to be acquired and any land or property necessary to comply with any order, determination, rule, or regulation of the DOT.

The application for approval shall be considered a “contested case” under the “Administrative Procedure Act.” A formal hearing may be held by the Office of Administrative Law. The burden of proof shall be on the railroad utility. The proceedings are to be conducted in accordance with procedures specified or provided in the bill. No railroad utility shall condemn property or interests belonging to the State of New Jersey, or any authority, corporation, or instrumentality of the State.

This bill is identical to Senate Bill No. 2743 (1R) which passed the Senate on June 21, 2007.