

## CHAPTER NO. 863

## SENATE BILL NO. 3296

By Jackson, Burks, Fowler, Curtis S. Person, Jr., Kilby, Finney, Herron, Crowe

Substituted for: House Bill No. 3450

By Fowlkes, Ulysses Jones, McDaniel, Gresham, Swafford, Davidson, Coleman, Borchert, Eldridge, Baird, Bone, Harmon, West, Sontany, Eric Watson, Montgomery, Mr. Speaker Naifeh, McDonald, Yokley, Moore, Maddox, Fitzhugh, Rinks, McMillan, Roach, Odom, Cooper, Fraley, Curtiss, Ferguson, Dunn, Sargent, McKee, Russell Johnson, Harrison, Marrero, Larry Turner, Crider, Cobb, Shepard, Pinion, Shaw, Favors, Pruitt, Matheny, DuBois, Hill, Curtis Johnson, Winningham, Niceley, Davis, Mumpower, Godsey

AN ACT to amend Tennessee Code Annotated, Title 1; Title 6; Title 7; Title 11; Title 12; Title 13; Title 29; Title 43; Title 49; Title 54; Title 64; Title 65; Title 68 and Title 69, relative to the power and use of eminent domain and property acquired by eminent domain.

WHEREAS, the general assembly takes notice of and reaffirms the rights guaranteed by the Fifth and Fourteenth Amendments of the Constitution of the United States, and by Article I, § 21 of the Constitution of the State of Tennessee, of an individual to privately own property and for such property to be free from condemnation and taking by the government, and political subdivisions thereof, through the power of eminent domain unless the taking is for a public use and accompanied by just compensation; and

WHEREAS, it is the intent of the general assembly that private property shall not be condemned or taken through the power of eminent domain by the State of Tennessee or any county, municipality, housing authority, industrial development board, any other governmental subdivision or entity or by any person authorized by the general assembly to exercise the power of eminent domain unless in accordance with such provisions of the United States Constitution, the Tennessee Constitution, and the provisions of this act; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 29, Chapter 17, is amended by adding the following as a new part to be designated as Part 1 and renumbering existing parts accordingly:

§ 29-17-101. It is the intent of the general assembly that the power of eminent domain shall be used sparingly, and that laws permitting the use of eminent domain shall be narrowly construed so as not to enlarge by inference or inadvertently the power of eminent domain.

§ 29-17-102. As used in this part, unless the context otherwise requires:

(a) "Eminent domain" means the authority conferred upon the government, and those entities to whom the government delegates such authority, to condemn and take, in whole or in part, the private property of another so long as such property is taken for a legitimate public use in accordance with the Fifth and Fourteenth Amendments to the

United States Constitution, Article 1, Section 21 of the Tennessee Constitution, and the provisions of this act;

(b) "Public use" shall not include either private use or benefit or the indirect public benefits resulting from private economic development and private commercial enterprise, including increased tax revenue and increased employment opportunity, except as follows:

(1) The acquisition of any interest in land necessary for a road, highway, bridge, or other structure, facility, or project used for public transportation;

(2) The acquisition of any interest in land necessary to the function of a public or private utility, a governmental or quasi-governmental utility, a common carrier, or any entity authorized to exercise the power of eminent domain under Title 65;

(3) The acquisition of property by a housing authority or community development agency to implement an urban renewal or redevelopment plan in a blighted area as authorized by Title 13, Chapter 20, Part 2 or Title 13, Chapter 21, Part 2;

(4) Private use that is merely incidental to a public use, so long as no land is condemned or taken primarily for the purpose of conveying or permitting such incidental private use; or

(5) The acquisition of property by a county, city, or town for an industrial park as authorized by Title 13, Chapter 16, Part 2.

§ 29-17-103. In event of a conflict between this part and any other statutes granting the authority to use the power of eminent domain by government entities, or those entities to whom the government delegates such authority, this part shall control and shall be construed to protect the private property rights of individuals and businesses such that private property may only be condemned and taken for legitimate public use as defined herein.

SECTION 2. Tennessee Code Annotated, Section 13-20-201, is amended by adding a new subsection (c) as follows:

(c) Under no circumstances shall land used predominantly in the production of agriculture, as defined by § 1-3-105, be considered a blighted area.

SECTION 3. Tennessee Code Annotated, Section 13-16-207, is amended by adding a new subsection (e) as follows:

(e) A city or county may exercise the power of eminent domain for development of an industrial park only with respect to property located within the jurisdictional boundaries of the city or county; or in the case of a city, also with respect to property within an urban growth boundary as defined in § 6-58-101, or in the case of a county, also with respect to property within an urban growth boundary or planned growth area as defined in § 6-58-101. Either a city or town and county, or both, operating a joint industrial park may exercise the power of eminent domain with respect to property

located within the jurisdictional boundaries of the county and within an urban growth boundary and a planned growth area. Before a city or county may undertake to exercise the power of eminent domain for development of an industrial park, it must obtain a certificate of public purpose and necessity as provided in subsection (a) even if no funds will be borrowed for the project, except:

(1) The requirements of subdivision (a)(1)(A)(iv) are not applicable to a certificate of public purpose and necessity obtained solely for the exercise of eminent domain authority; and

(2) A certificate of public purpose and necessity for the exercise of eminent domain, in addition to the applicable findings set forth in subdivision (a)(1)(A), shall be based on a finding that the city or county has been unable to acquire through good faith negotiations the property to be acquired by eminent domain or any alternative property that would be of comparable suitability for the project. Good faith negotiations shall be established if the city or county has made an offer to purchase the property for an amount equal to or in excess of the fair market value determined by the average of at least two (2) appraisals by independent, qualified appraisers.

SECTION 4. Tennessee Code Annotated, Title 29, Chapter 17, Part 12, is amended by adding the following as a new section:

§ 29-17-1203. (a) Land acquired by eminent domain that the acquiring entity seeks to dispose of may be sold, leased or otherwise transferred to another public or quasi-public entity or to a private person, corporation or other entity provided the entity transferring the land receives at least fair market value for such land.

(b) Nothing in this section shall be construed to apply to or affect the disposal of the state's surplus interests in real property pursuant to § 12-2-112.

SECTION 5. Tennessee Code Annotated, Section 64-1-603, is amended by deleting subdivision (3) in its entirety and substituting instead the following:

(3) Acquire by purchase, lease, gift, or in any manner other than by condemnation, property of any kind, real, personal or mixed, or any interest therein, that the board deems necessary or convenient to the exercise of its powers or functions; and

SECTION 6. Tennessee Code Annotated, Section 64-1-204, is amended by deleting item (15) in its entirety.

SECTION 7. Tennessee Code Annotated, Section 64-1-503, is amended by deleting item (14) and substituting instead the following:

(14) Acquire by purchase, lease, or gift, such real and personal property or any interest therein, as the board deems necessary or convenient in carrying out the purposes of this part; and

SECTION 8. Tennessee Code Annotated, Section 64-4-106, is amended by deleting the section and substituting instead the following:

Any one (1) of the participating counties, Decatur, Hardin, Perry and Wayne, upon the written recommendation of the Port Authority Commissioners, may acquire any interest in land within the boundaries of the county by gift, purchase, or lease and may transfer such interest to the authority by sale, lease or gift. Such transfer may be authorized by resolution of the governing body of the county without submission of the question to the voters and without regard to the requirements, restrictions or other provisions contained in any other general, special or local law.

SECTION 9. Tennessee Code Annotated, Section 54-11-302, is amended by deleting the section in its entirety.

SECTION 10. Tennessee Code Annotated, Title 11, Chapter 22, Part 1, is amended by deleting the part in its entirety and substituting instead the following:

§ 11-22-101. The legislative body of any county is authorized to acquire by gift or purchase, any natural lakes or lands suitable for the construction of lakes, and to hold fee simple title in the name of the county.

SECTION 11. Tennessee Code Annotated, Section 69-6-118, is amended by deleting subsection (a)(9) and substituting instead the following:

(9) Acquire land, or any interest in land, including leasehold interests, by gift, or purchase;

SECTION 12. Tennessee Code Annotated, Title 43, Chapter 23, Part 1, is amended by deleting the part in its entirety.

SECTION 13. Tennessee Code Annotated, Title 65, Chapter 18, Part 1, is amended by deleting §§ 65-18-101 and 65-18-102 in their entirety and substituting instead the following:

§ 65-18-102. Incline railroad corporations are authorized to adopt such gauge as it may prefer.

SECTION 14. Tennessee Code Annotated, Section 13-20-201, is amended by deleting subsection (a) in its entirety and substituting instead the following:

(a) "Blighted areas" are areas (including slum areas) with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, lack of ventilation, light and sanitary facilities, deleterious land use, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community. "Welfare of the community" does not include solely a loss of property value to surrounding properties nor does it include the need for increased tax revenues. Under no circumstance shall land used predominantly in the production of agriculture, as defined by § 1-3-105, be considered a blighted area.

SECTION 15. Notwithstanding any provision of law to the contrary, in any condemnation proceedings initiated in this state:

(a) Notice of the filing of a petition to institute condemnation proceedings shall be given to each respondent at least thirty (30) days prior to the taking of any additional steps in the case. If the respondent is unknown, is a nonresident of the state, or cannot be found, notice shall be given by publication, which shall be made in the same manner as provided by law for similar situations in chancery court.

(b) (1) After the expiration of thirty (30) days from the date of the giving of such notice, if the right to take has not been challenged in an answer, the condemnor shall have the right to take possession of the property or property rights sought to be condemned.

(2) If the right to take is challenged in an answer within thirty (30) days from the date of the giving of such notice, the court shall promptly determine as a matter of law whether the condemnor has the right to take the property or property rights sought to be condemned, and if the court determines that the condemnor has the right to take, the condemnor shall thereupon have the right to take possession thereof.

When a condemnor has the right to take possession of property or property rights, if necessary, the court shall issue a writ of possession to the sheriff of the county to put the condemnor in possession. Such writ may be issued prior to a trial on the damages.

SECTION 16. Tennessee Code Annotated, Section 29-17-401, is amended by deleting subsection (a) in its entirety and substituting instead the following:

(a) No sooner than thirty (30) days after the filing of a petition by a housing authority, created pursuant to the Housing Authorities Law (compiled in Title 13, Chapter 20) or any other law of this state, for condemnation of property, and before the entry of final judgment, a housing authority may file with the clerk of the court in which the petition is filed, a declaration of taking signed by the duly authorized officer or agent of the housing authority declaring that all or any part of the property described in the petition is being taken for the use of the housing authority.

SECTION 17. Tennessee Code Annotated, Section 29-17-803, is amended by deleting the language "five (5) days" wherever it appears and substituting instead the language "thirty (30) days".

SECTION 18. If, pursuant to an applicable statute or order of the court, the condemnor is required to deposit funds with the court in the amount the condemnor deems to be the amount of damages to which the owner is entitled pursuant to such condemnation, and a respondent is not satisfied with the amount deposited by the condemnor, or otherwise objects to the taking, then such respondent shall, on or before thirty (30) days from the date of notice of the filing of the petition, file an answer to the petition and a trial may thereafter be had before a petit jury as other civil actions are tried. Such deposit by the condemnor shall not limit or fix the amount to be allowed under subsequent proceedings in the action.

SECTION 19. Tennessee Code Annotated, Section 29-16-114(a), is amended by designating the present language as subdivision (1) and by adding the following language as a new subdivision (2):

(2) When title to an entire tax parcel is condemned in fee, the total amount of damages for the condemnation of such parcel shall be not less than the last valuation used by the assessor of property just prior to the date of taking less any decrease in value for any changes in such parcel occurring since the valuation was made, such as the removal or destruction of a building, flooding, waste, or removal of trees. Such valuation may be introduced and admitted into evidence at the trial. In addition to condemnation proceedings under this chapter, the provisions of this subdivision shall apply to condemnation proceedings under Title 29, Chapter 17 or any other provision of law.

SECTION 20. Tennessee Code Annotated, Title 29, Chapter 7, Part 12, is amended by adding the following as a new section:

29-17-12\_\_\_. Notwithstanding any provision of law to the contrary, in any condemnation proceeding in this state an appraisal of the property must be obtained. The appraisal shall value the property considering its highest and best use, its use at the time of the taking, and any other uses to which the property is legally adaptable at the time of the taking. Any appraiser making such an appraisal must possess the designation Member of the Appraisal Institute (MAI) or be an otherwise licensed and qualified appraiser under Title 62, Chapter 39.

SECTION 21. Tennessee Code Annotated, Section 29-17-701, is amended by deleting the section in its entirety and by substituting instead the following:

(a) When a governmental entity or other person or entity with the power of eminent domain deems it necessary to condemn any property or property rights pursuant to this chapter or Chapter 16, it shall deposit the amount determined by the required appraisal with the clerk of the circuit court having jurisdiction in the county in which the same, or a portion of the same, is located, and shall file a petition in such court asking that the same be condemned and decreed to the condemnor.

(b) Such payment into court shall in no way limit or fix the amount to be allowed under subsequent proceedings in such case, and any further or additional sum that may be finally awarded in any subsequent proceedings shall bear interest from the date of the taking of possession of the property or property rights condemned by the condemnor.

SECTION 22. Tennessee Code Annotated, Section 29-17-803(a), is amended by deleting the subsection in its entirety and by substituting instead the following:

(a) When a governmental entity or other person or entity with the power of eminent domain deems it necessary to condemn any property or property rights pursuant to this chapter or Chapter 16, it shall deposit the amount determined by the required appraisal with the clerk of the circuit court having jurisdiction in the county in which the same, or a portion of the same, is located, and shall file a petition in such court asking that the same be condemned and decreed to the condemnor.

SECTION 23. Tennessee Code Annotated, Section 29-17-803, is amended by adding the following language as a new subdivision (b) and by redesignating subsequent subsections accordingly:

(b) Such payment into court shall in no way limit or fix the amount to be allowed under subsequent proceedings in such case, and any further or additional sum that may be finally awarded in any subsequent proceedings shall bear interest from the date of the taking of possession of the property or property rights condemned by the condemnor.

#### SECTION 24.

(a) Notwithstanding the provisions of any law to the contrary, in any condemnation proceeding initiated in this state, the bill of costs prepared by the clerk shall be taxed against:

(1) The condemnor, if:

(A) The amount of damages awarded at trial exceeds the amount assessed by the condemnor and deposited with the clerk;

(B) The condemnation is abandoned by the condemnor; or

(C) The final judgment is that the condemnor cannot acquire the property or property rights by condemnation; or

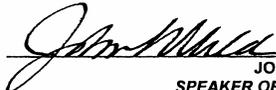
(2) The respondents, if the amount of damages awarded at trial does not exceed the amount assessed by the condemnor and deposited with the clerk.

(b) Notwithstanding the provisions of any law to the contrary, in any condemnation proceeding initiated in this state, the court shall award the respondents such sum as will reimburse them for their reasonable disbursements and expenses, including reasonable attorney, appraisal, and engineering fees actually incurred because of the action, only if the costs are taxed to the condemnor pursuant to subdivision (a)(1)(B) or (a)(1)(C) of this section. The court shall not award such sum if the costs are taxed to the condemnor pursuant to subdivision (a)(1)(A).

(c) Rule 54.04 of the Tennessee Rules of Civil Procedure shall govern the taxing of any additional costs.

SECTION 25. This act shall take effect on July 1, 2006, the public welfare requiring it, and shall apply only to eminent domain or condemnation proceedings initiated on or after that date.

Passed: May 24, 2006

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 5th day of June 2006

  
PHIL BREDESEN, GOVERNOR