

1653

2009-2010 Regular Sessions

I N S E N A T E

February 4, 2009

Introduced by Sens. DeFRANCISCO, KRUEGER, MORAHAN, VOLKER -- read twice
and ordered printed, and when printed to be committed to the Committee
on Judiciary

AN ACT to amend the eminent domain procedure law, in relation to the use
of eminent domain

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 104 of the eminent domain procedure law is amended
2 to read as follows:
3 S 104. Applicability. The eminent domain procedure law shall be
4 uniformly applied to any and all acquisitions by eminent domain of real
5 property within the state of New York. EMINENT DOMAIN SHALL ONLY BE
6 USED FOR PUBLIC PROJECTS INCLUDING FOR THE PURPOSE OF ESTABLISHING,
7 LAYING OUT, EXTENDING AND WIDENING STREETS, AVENUES, BOULEVARDS, ALLEYS,
8 AND OTHER PUBLIC HIGHWAYS AND ROADS; FOR PUMPING STATIONS, WATERWORKS,
9 RESERVOIRS, WELLS, JAILS, POLICE AND FIRE STATIONS, CITY HALLS, OFFICE
10 AND OTHER PUBLIC BUILDINGS INCLUDING SCHOOLS, CEMETERIES, PARKS, PLAY-
11 GROUNDS AND PUBLIC SQUARES, PUBLIC OFF-STREET PARKING FACILITIES AND
12 ACCOMMODATIONS, LAND FROM WHICH TO OBTAIN EARTH, GRAVEL, STONES, AND
13 OTHER MATERIAL FOR THE CONSTRUCTION OF ROADS AND OTHER PUBLIC WORKS AND
14 FOR RIGHT-OF-WAY FOR DRAINS, SEWERS, PIPE LINES, AQUEDUCTS, AND OTHER
15 CONDUITS FOR DISTRIBUTING WATER TO THE PUBLIC; FOR FLOOD CONTROL; FOR
16 HOUSING; FOR USE BY THE GOVERNMENT OF THE UNITED STATES; FOR RAILROADS,
17 CANALS AND NAVIGABLE WATERWAYS, AIRPORTS AND OTHER PUBLIC TRANSPORTATION
18 FACILITIES AND SERVICES; FOR WATER POWER, PUBLIC UTILITIES OR OTHER
19 PRODUCTION AND TRANSMISSION OF HEAT, LIGHT OR POWER; FOR RECREATION,
20 CONSERVATION, OPEN SPACE AND HISTORIC, ENVIRONMENTAL AND CULTURAL
21 RESOURCE PROTECTION, AND SOLID WASTE MANAGEMENT; FOR RIVER REGULATION OR
22 MANAGEMENT; FOR PUBLIC HOSPITALS AND HEALTH CARE FACILITIES; FOR RECLA-
23 MATION OF SWAMP LANDS AND TO TAKE SUCH EXCESS OVER THAT NEEDED FOR SUCH
24 PUBLIC USE OR PUBLIC IMPROVEMENT IN CASES WHERE SMALL REMNANTS WOULD

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 OTHERWISE BE LEFT OR WHERE OTHER JUSTIFIABLE CAUSE NECESSITATES THE
2 TAKING TO PROTECT AND PRESERVE THE CONTEMPLATED IMPROVEMENT OR PUBLIC
3 POLICY DEMANDS, THE TAKING IN CONNECTION WITH THE IMPROVEMENT, AND TO
4 SELL OR LEASE THE EXCESS PROPERTY WITH SUCH RESTRICTIONS AS MAY BE
5 DICTATED BY CONSIDERATIONS OF PUBLIC POLICY IN ORDER TO PROTECT AND
6 PRESERVE THE IMPROVEMENT; PROVIDED THAT WHEN THE EXCESS PROPERTY IS
7 DISPOSED OF IT SHALL BE FIRST OFFERED TO THE ABUTTING OWNERS FOR A
8 REASONABLE LENGTH OF TIME AND AT A REASONABLE PRICE AND IF SUCH OWNERS
9 FAIL TO TAKE THE EXCESS PROPERTY THEN IT MAY BE SOLD AT PUBLIC AUCTION.

10 S 2. The eminent domain procedure law is amended by adding a new
11 section 204-a to read as follows:

12 S 204-A. VOTE BY LOCAL GOVERNMENT. AFTER ANY INDUSTRIAL DEVELOPMENT
13 AGENCY APPROVES THE USE OF EMINENT DOMAIN, THE GOVERNING BODY OF THE
14 MUNICIPALITY: (A) FOR WHOSE BENEFIT THE AGENCY WAS CREATED, AND (B)
15 WHERE THE PROPERTY PROPOSED TO BE CONDEMNED IS LOCATED, SHALL VOTE TO
16 DETERMINE WHETHER OR NOT TO CONDEMN THE PROPERTY. FOR PURPOSES OF THIS
17 SECTION, THE TERMS "MUNICIPALITY" SHALL MEAN ANY COUNTY, TOWN, CITY OR
18 VILLAGE IN THE STATE; AND "GOVERNING BOARD" SHALL MEAN THE BODY IN WHICH
19 THE GENERAL LEGISLATIVE POWERS OF THE MUNICIPALITY ARE VESTED, INCLUDING
20 THE BOARD OF SUPERVISORS OF A COUNTY, THE TOWN BOARD OF A TOWN, THE
21 COMMON COUNCIL OF A CITY, THE CITY COUNCIL, IF THE PROPERTY IS LOCATED
22 IN A COUNTY WHOLLY CONTAINED WITHIN A CITY WITH A POPULATION OF ONE
23 MILLION OR MORE, AND THE BOARD OF TRUSTEES OF A VILLAGE.

24 S 3. Subdivision (A) of section 702 of the eminent domain procedure
25 law is amended to read as follows:

26 (A) The condemnor shall reimburse a condemnee an amount separately
27 computed and stated, representing the following incidental expenses:

28 (1) any recording fees, transfer taxes and other similar expenses in
29 connection with the acquisition of the property by the condemnor or in
30 connection with the transfer of the property to the condemnor; [and]

31 (2) any penalty incurred by the condemnee for prepayment of any preex-
32 isting recorded mortgage entered into in good faith, encumbering such
33 property; [and]

34 (3) the pro rata portion of the real property taxes, water rents,
35 sewer rents, special ad valorem taxes and other charges paid or payable
36 to a taxing entity which are allocable to a period subsequent to the
37 date of vesting title or the effective date of possession of such prop-
38 erty in the condemnor, whichever is earlier[.]; AND

39 (4) ANY RELOCATION COSTS INCURRED IN CONNECTION WITH THE ACQUISITION
40 OF THE PROPERTY BY THE CONDEMNOR OR IN CONNECTION WITH THE TRANSFER OF
41 THE PROPERTY TO THE CONDEMNOR.

42 S 4. This act shall take effect immediately and shall apply to any
43 eminent domain procedures commenced on or after such date.