S T A T E O F N E W Y O R K

2898

2011-2012 Regular Sessions

I N S E N A T E

February 3, 2011

Introduced by Sens. DeFRANCISCO, LANZA, LARKIN, LAVALLE, RANZENHOFER -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

proposing an amendment to section 7 of article 1 of the constitution, in relation to the taking of private property; and repealing section 7 of article 1 of the constitution relating to just compensation for taking private property

Section 1. Resolved (if the Assembly concur), That section 7 of article 1 of the constitution is REPEALED and a new section 7 of article 1 is added to read as follows:

S 7. (A) WITH JUST COMPENSATION PAID, PRIVATE PROPERTY MAY BE TAKEN ONLY WHEN NECESSARY FOR THE POSSESSION, OCCUPATION, AND ENJOYMENT OF LAND BY THE PUBLIC AT LARGE, OR BY PUBLIC AGENCIES.

(B) EXCEPT FOR PRIVATELY OWNED COMMON CARRIERS AND PUBLIC UTILITIES, PRIVATE PROPERTY SHALL NOT BE TAKEN FOR USE BY PRIVATE COMMERCIAL ENTERPRISE, FOR ECONOMIC DEVELOPMENT, OR FOR ANY OTHER PRIVATE USE, EXCEPT WITH THE CONSENT OF THE OWNER. PROPERTY SHALL NOT BE TAKEN FROM ONE OWNER AND TRANSFERRED TO ANOTHER, ON THE GROUNDS THAT THE PUBLIC WILL BENEFIT FROM A MORE PROFITABLE PRIVATE USE.

(C) WHENEVER AN ATTEMPT IS MADE TO TAKE PRIVATE PROPERTY FOR A USE ALLEGED TO BE PUBLIC, THE QUESTION WHETHER THE CONTEMPLATED USE BE REALLY PUBLIC SHALL BE A JUDICIAL QUESTION, AND DETERMINED AS SUCH WITHOUT REGARD TO ANY LEGISLATIVE ASSERTION THAT THE USE IS PUBLIC.

S 2. Resolved (if the Assembly concur), That the foregoing amendment be referred to the first regular legislative session convening after the next succeeding general election of members of the assembly, and, in conformity with section 1 of article 19 of the constitution, be published for 3 months previous to the time of such election.

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

LBD89046-01-1