

4685

2011-2012 Regular Sessions

I N   S E N A T E

April 14, 2011

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Introduced by Sen. FLANAGAN -- read twice and ordered printed, and when printed to be committed to the Committee on Commerce, Economic Development and Small Business

AN ACT to amend the public authorities law, the not-for-profit corporation law, the general municipal law and the eminent domain procedure law, in relation to eminent domain reform

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

1     Section 1. Short title. This act shall be known and may be cited as  
2     the "eminent domain reform act".

3     S 2. The public authorities law is amended by adding a new section  
4     1831-b to read as follows:

5     S 1831-B. EXERCISE OF POWER OF EMINENT DOMAIN; LIMITATIONS. THE LOCAL  
6     LEGISLATIVE BODY OF EACH CITY, TOWN, OR VILLAGE IN WHICH THE AUTHORITY  
7     SEEKS TO EXERCISE THE POWER OF EMINENT DOMAIN SHALL HAVE THE AUTHORITY  
8     TO APPROVE OR DISAPPROVE ANY EXERCISE OF SUCH POWER BY THE AUTHORITY.  
9     EVERY SUCH LOCAL LEGISLATIVE BODY SHALL APPROVE OR DISAPPROVE ANY EXER-  
10    CISE OF SUCH POWER BY MAJORITY VOTE. WHERE APPLICABLE IN THE ENACTMENT  
11    OF LOCAL LAWS, THE CHIEF EXECUTIVE OFFICER OF SUCH LOCALITY IF THE  
12    OFFICE OF SUCH CHIEF EXECUTIVE OFFICER IS ELECTIVE SHALL APPROVE OR  
13    DISAPPROVE SUCH LOCAL LEGISLATIVE BODY'S DECISION, SUBJECT TO ANY APPLI-  
14    CABLE RIGHT TO OVERRIDE.

15    S 3. Paragraph (i) of section 1411 of the not-for-profit corporation  
16    law is relettered paragraph (j) and a new paragraph (i) is added to read  
17    as follows:

18    (I) MUNICIPAL INPUT. THE LOCAL LEGISLATIVE BODY OF EACH CITY, TOWN,  
19    OR VILLAGE IN WHICH ANY PART OF THE REAL PROPERTY TO BE ACQUIRED IS  
20    LOCATED SHALL HAVE THE AUTHORITY TO APPROVE OR DISAPPROVE ANY CORPO-  
21    RATION'S USE OF EMINENT DOMAIN. EACH SUCH LOCAL LEGISLATIVE BODY SHALL  
22    APPROVE OR DISAPPROVE ANY PROPOSED CORPORATE USE OF THE POWER OF EMINENT  
23    DOMAIN BY MAJORITY VOTE. WHERE APPLICABLE IN THE ENACTMENT OF LOCAL

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

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LAWS, THE CHIEF EXECUTIVE OFFICER OF SUCH LOCALITY IF THE OFFICE OF SUCH CHIEF EXECUTIVE OFFICER IS ELECTIVE SHALL APPROVE OR DISAPPROVE SUCH GOVERNING BODY'S DECISION, SUBJECT TO ANY APPLICABLE RIGHT TO OVERRIDE.

S 4. The general municipal law is amended by adding a new section 858-c to read as follows:

S 858-C. MUNICIPAL INPUT. THE GOVERNING BODY OF EACH CITY, TOWN, OR VILLAGE FOR WHOSE BENEFIT, IN WHOLE OR IN PART, AN AGENCY IS ESTABLISHED SHALL HAVE THE AUTHORITY TO APPROVE OR DISAPPROVE ANY AGENCY USE OF EMINENT DOMAIN. EACH SUCH GOVERNING BODY SHALL APPROVE OR DISAPPROVE THE USE OF EMINENT DOMAIN BY MAJORITY VOTE. WHERE APPLICABLE IN THE ENACTMENT OF LOCAL LAWS, THE CHIEF EXECUTIVE OFFICER OF SUCH LOCALITY IF THE OFFICE OF SUCH CHIEF EXECUTIVE OFFICER IS ELECTIVE SHALL APPROVE OR DISAPPROVE SUCH GOVERNING BODY'S DECISION, SUBJECT TO ANY APPLICABLE RIGHT TO OVERRIDE.

S 5. Section 103 of the eminent domain procedure law is amended by adding two new subdivisions (H) and (I) to read as follows:

(H) "ECONOMIC DEVELOPMENT PROJECT" MEANS ANY PROJECT FOR WHICH ACQUISITION OF REAL PROPERTY MAY BE REQUIRED FOR A PUBLIC USE, BENEFIT, OR PURPOSE WHERE SUCH PUBLIC USE, BENEFIT, OR PURPOSE IS PRIMARILY FOR ECONOMIC DEVELOPMENT AND WHERE THE CONDEMNEE'S REAL PROPERTY IS A HOME OR DWELLING.

(I) FOR THE PURPOSES OF ARTICLE TWO OF THIS CHAPTER:

(1) "HOME" MEANS OWNER-OCCUPIED RESIDENTIAL PREMISES CONSISTING OF NOT MORE THAN SIX DWELLING UNITS.

(2) "DWELLING" MEANS RESIDENTIAL PREMISES CONSISTING OF NOT MORE THAN THIRTY DWELLING UNITS, NONE OF WHICH IS OCCUPIED BY AN OWNER OF SUCH PREMISES.

(3) IN THE CASE OF COOPERATIVE APARTMENT CORPORATIONS, TITLE TO THAT PORTION OF REAL PROPERTY OWNED BY A COOPERATIVE APARTMENT CORPORATION IN WHICH A TENANT-STOCKHOLDER OF SUCH CORPORATION RESIDES, AND WHICH IS REPRESENTED BY HIS OR HER SHARE OR SHARES OF STOCK IN SUCH CORPORATION AS DETERMINED BY ITS OR THEIR PROPORTIONAL RELATIONSHIP TO THE TOTAL OUTSTANDING STOCK OF THE CORPORATION, INCLUDING THAT OWNED BY THE CORPORATION, SHALL BE DEEMED TO BE VESTED IN SUCH TENANT-STOCKHOLDER NOTWITHSTANDING THE NUMBER OF DWELLING UNITS IN SUCH RESIDENTIAL PREMISES, THUS QUALIFYING A COOPERATIVE APARTMENT AS A HOME.

S 6. Subdivision (B) of section 204 of the eminent domain procedure law is amended to read as follows:

(B) The condemnor, in its determination and findings, shall specify, but shall not be limited to the following:

(1) the public use, benefit or purpose to be served by the proposed public project;

(2) the approximate location for the proposed public project and the reasons for the selection of that location;

(3) the general effect of the proposed project on the environment and residents of the locality;

(4) A DECLARATION TO SUCH EFFECT IF THE PRIMARY PUBLIC PURPOSE IS DETERMINED TO BE FOR ECONOMIC DEVELOPMENT WHERE ONE OR MORE CONDEMNED HOMES OR DWELLINGS ARE TO BE AFFECTED; AND

(5) such other factors as it considers relevant.

S 7. The eminent domain procedure law is amended by adding a new section 204-a to read as follows:

S 204-A. ECONOMIC DEVELOPMENT CONDEMNATION FINDINGS AND HOMEOWNER PROTECTION. (A) IF THE CONDEMNOR DETERMINES PURSUANT TO PARAGRAPH FOUR OF SUBDIVISION (B) OF SECTION TWO HUNDRED FOUR OF THIS ARTICLE THAT THE PRIMARY PUBLIC PURPOSE OR BENEFIT IS FOR ECONOMIC DEVELOPMENT, THE

1 CONDEMNOR, IN COOPERATION WITH THE GOVERNMENT OF THE LOCALITY IN WHICH  
2 THE REAL PROPERTY TO BE ACQUIRED IS LOCATED SHALL PREPARE A COMPREHEN-  
3 SIVE ECONOMIC DEVELOPMENT PLAN FOR THE AFFECTED AREA. THE COMPREHENSIVE  
4 ECONOMIC DEVELOPMENT PLAN SHALL INCLUDE, BUT NOT BE LIMITED TO, THE  
5 ACTUAL OR EXPECTED BENEFITS OF THE PROJECT, INCLUDING THE EXPECTED  
6 INCREASED TAX REVENUE OR EXPECTED CREATION OF JOBS, THE TYPES OF BUSI-  
7 NESSES OR INDUSTRY THAT WILL USE THE CONDEMNED PROPERTY, AND ALTERNA-  
8 TIVES TO THE PLAN. WHEN A DRAFT COMPREHENSIVE ECONOMIC DEVELOPMENT PLAN  
9 IS CREATED, THE CONDEMNOR, IN COOPERATION WITH THE GOVERNMENT OF THE  
10 LOCALITY IN WHICH THE REAL PROPERTY TO BE ACQUIRED IS LOCATED SHALL HOLD  
11 AT LEAST ONE PUBLIC HEARING TO COMPILE AND ANALYZE PUBLIC INPUT. THE  
12 PUBLIC HEARING SHALL BE HELD IN ACCORDANCE WITH THE PROVISIONS OF THIS  
13 ARTICLE AT A LOCATION REASONABLY PROXIMATE TO THE REAL PROPERTY WHICH  
14 MAY BE ACQUIRED FOR SUCH PROJECT. THEREAFTER, THE CONDEMNOR SHALL  
15 COMPLETE A FINAL COMPREHENSIVE ECONOMIC DEVELOPMENT PLAN TO BE SUBMITTED  
16 TO THE LOCAL LEGISLATIVE BODY, SUBJECT TO ANY APPLICABLE RIGHT TO OVER-  
17 RIDE FOR ITS APPROVAL. TO MOVE FORWARD WITH THE PROJECT, THE LOCAL  
18 LEGISLATIVE BODY MUST APPROVE THE PLAN BY A MAJORITY VOTE, AND IT MUST  
19 ALSO BE APPROVED BY THE CHIEF EXECUTIVE OFFICER OF SUCH LOCALITY IF THE  
20 OFFICE OF SUCH CHIEF EXECUTIVE OFFICER IS ELECTIVE.

21 (B) THE CONDEMNOR SHALL ALSO CREATE A HOMEOWNER IMPACT ASSESSMENT  
22 STATEMENT. THE CONDEMNOR, IN THE HOMEOWNER IMPACT ASSESSMENT STATEMENT,  
23 SHALL ASSESS THE ACTUAL HARM TO AFFECTED CONDEMNEES' THAT WOULD LOSE  
24 THEIR HOMES OR DWELLINGS AND COMPARE SUCH HARM WITH THE REASONABLY  
25 EXPECTED COMMUNITY BENEFITS, INCLUDING BUT NOT LIMITED TO HOW THE  
26 CONDEMNOR JUSTIFIES THE TAKING OF THE CONDEMNEES' HOMES OR DWELLINGS.  
27 THE HOMEOWNER IMPACT ASSESSMENT STATEMENT SHALL BE COMPLETED SIMULTANE-  
28 OUSLY WITH THE COMPREHENSIVE ECONOMIC DEVELOPMENT PLAN UNDER SUBDIVISION  
29 (A) OF THIS SECTION. THE HOMEOWNER IMPACT ASSESSMENT STATEMENT SHALL BE  
30 MADE WIDELY AVAILABLE.

31 (C) IN CASES WHERE A CONDEMNEE'S HOME OR DWELLING IS ACQUIRED FOR AN  
32 ECONOMIC DEVELOPMENT PROJECT, THE CONDEMNOR SHALL, IN ADDITION TO ANY  
33 OTHER COMPENSATION REQUIREMENTS UNDER THIS ARTICLE, COMPENSATE THE  
34 CONDEMNEE A MINIMUM OF ONE HUNDRED FIFTY PERCENT OF THE FAIR MARKET  
35 VALUE OF THE REAL PROPERTY. RESIDENTS WHO ARE DISPLACED BY THE ECONOMIC  
36 DEVELOPMENT PROJECT SHALL ALSO BE COMPENSATED AT LEAST ONE HUNDRED FIFTY  
37 PERCENT OF THE ANNUAL RENT OF SUCH DWELLING.

38 S 8. Subdivision (A) of section 207 of the eminent domain procedure  
39 law, as amended by chapter 356 of the laws of 1982, is amended to read  
40 as follows:

41 (A) Any person or persons jointly or severally, aggrieved by the  
42 condemnor's determination and findings made pursuant to section two  
43 hundred four of this article, may seek judicial review thereof by the  
44 appellate division of the supreme court, in the judicial department  
45 embracing the county wherein the proposed facility is located by the  
46 filing of a petition in such court within [thirty] NINETY days after the  
47 condemnor's completion of its publication of its determination and find-  
48 ings pursuant to section two hundred four [herein] OF THIS ARTICLE. Such  
49 petition shall be accompanied by proof of service of a demand on the  
50 condemnor to file with said court a copy of a written transcript of the  
51 record of the proceeding before it, and a copy of its determination and  
52 findings. Upon receipt of such petition and demand, the condemnor shall  
53 forthwith deliver to the court a copy of the record and a copy of its  
54 determination and findings. The proceeding shall be heard on the record  
55 without requirement of reproduction. If such proposed public improvement  
56 is located in more than one judicial department, such proceeding may be

1 brought in any one, but only one, of such departments, and all such  
2 proceedings with relation to any single public project shall be consol-  
3 idated with that first filed. IF THE CONDEMNOR SUBSTANTIALLY ALTERS THE  
4 SCOPE OF THE PROJECT OR THE DETERMINATION AND FINDINGS, THEN THE CONDEM-  
5 NEE SHALL HAVE AN ADDITIONAL NINETY DAYS FROM THE CONDEMNOR'S PUBLICA-  
6 TION OF SUCH ALTERATION, WHICH PUBLICATION IS HEREBY REQUIRED, TO SEEK  
7 JUDICIAL REVIEW UNDER THIS SECTION.

8 S 9. This act shall take effect on the one hundred twentieth day after  
9 it shall have become a law.