

# STATE OF NEW YORK

5673

2021-2022 Regular Sessions

## IN ASSEMBLY

February 22, 2021

Introduced by M. of A. FITZPATRICK, BYRNES, DiPIETRO, J. M. GIGLIO, MIKULIN, SALKA, TAGUE -- Multi-Sponsored by -- M. of A. BARCLAY, HAWLEY, MANKTELOW, McDONOUGH -- read once and referred to the Committee on Judiciary

AN ACT to amend the eminent domain procedure law, the not-for-profit corporation law, the general municipal law and the public authorities law, in relation to eminent domain reform; creating the "home and property protection act" providing for the creation of a temporary state commission to examine eminent domain laws and make recommendations for further reforms; making an appropriation therefor; and providing for the repeal of certain provisions upon expiration thereof

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 "home and property protection act".

3 § 2. Section 103 of the eminent domain procedure law is amended by  
4 adding three new subdivisions (H), (I) and (J) to read as follows:

5 (H) "Economic development project" means any project for which acqui-  
6 sition of real property may be required for a public use, benefit, or  
7 purpose where such public use, benefit, or purpose is primarily for  
8 economic development and where the condemnee's real property is a home  
9 or dwelling.

10 (I) For the purposes of article two of this chapter:

11 (1) "Home" means owner-occupied residential premises consisting of not  
12 more than six dwelling units.

13 (2) "Dwelling" means residential premises consisting of not more than  
14 thirty dwelling units, none of which is occupied by an owner of such  
15 premises.

16 (3) In the case of cooperative apartment corporations, title to that  
17 portion of real property owned by a cooperative apartment corporation in  
18 which a tenant-stockholder of such corporation resides, and which is

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

LBD08132-01-1

1 represented by his or her share or shares of stock in such corporation  
2 as determined by its or their proportional relationship to the total  
3 outstanding stock of the corporation, including that owned by the corpo-  
4 ration, shall be deemed to be vested in such tenant-stockholder notwith-  
5 standing the number of dwelling units in such residential premises, thus  
6 qualifying a cooperative apartment as a home.

7 (J) "Blighted area" means an area in which one or both of the follow-  
8 ing conditions exist: (i) a predominance of buildings and structures  
9 which are deteriorated or unfit or unsafe for use or occupancy; or (ii)  
10 a predominance of economically unproductive lands, buildings or struc-  
11 tures, the redevelopment of which is needed to prevent further deteri-  
12 oration which would jeopardize the economic well-being of the people.

13 § 3. Subdivision (B) of section 204 of the eminent domain procedure  
14 law is amended to read as follows:

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

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

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

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

23 (4) a declaration to such effect if the primary public purpose is  
24 determined to be for economic development where one or more condemnees'  
25 homes or dwellings are to be affected; and

26 (5) such other factors as it considers relevant.

27 § 4. The eminent domain procedure law is amended by adding a new  
28 section 204-a to read as follows:

29 § 204-a. Economic development condemnation findings and homeowner  
30 protection. (A) If the condemnor determines pursuant to paragraph four  
31 of subdivision (B) of section two hundred four of this article that the  
32 primary public purpose or benefit is for economic development, the  
33 condemnor, in cooperation with the government of the locality in which  
34 the real property to be acquired is located shall prepare a comprehen-  
35 sive economic development plan for the affected area. The comprehensive  
36 economic development plan shall include, but not be limited to, the  
37 actual or expected benefits of the project, including the expected  
38 increased tax revenue or expected creation of jobs, the types of busi-  
39 nesses or industry that will use the condemned property, and alterna-  
40 tives to the plan. When a draft comprehensive economic development plan  
41 is created, the condemnor, in cooperation with the government of the  
42 locality in which the real property to be acquired is located shall hold  
43 at least one public hearing to compile and analyze public input. The  
44 public hearing shall be held in accordance with the provisions of this  
45 article at a location reasonably proximate to the real property which  
46 may be acquired for such project. Thereafter, the condemnor shall  
47 complete a final comprehensive economic development plan to be submitted  
48 to the local legislative body, subject to any applicable right to over-  
49 ride for its approval. To move forward with the project, the local  
50 legislative body must approve the plan by a majority vote, and it must  
51 also be approved by the chief executive officer of such locality if the  
52 office of such chief executive officer is elective.

53 Notwithstanding any section of law to the contrary, the provisions of  
54 subdivision (A) of this section shall not apply to a public project  
55 where the primary public purpose or benefit is for economic development

1 if the area is a "blighted area" as defined under subdivision (J) of  
2 section one hundred three of this chapter.

3 (B) The condemnor shall also create a homeowner impact assessment  
4 statement. The condemnor, in the homeowner impact assessment statement,  
5 shall assess the actual harm to affected condemnees that would lose  
6 their homes or dwellings and compare such harm with the reasonably  
7 expected community benefits, including but not limited to how the  
8 condemnor justifies the taking of the condemnees' homes or dwellings.  
9 The homeowner impact assessment statement shall be completed simultane-  
10 ously with the comprehensive economic development plan under subdivision  
11 (A) of this section. The homeowner impact assessment statement shall be  
12 made widely available.

13 (C) In cases where a condemnee's home or dwelling is acquired for an  
14 economic development project, the condemnor shall, in addition to other  
15 compensation requirements under this article, compensate the condemnee a  
16 minimum of one hundred fifty percent of the fair market value of the  
17 real property. Residents who are displaced by the economic development  
18 project shall also be compensated at least one hundred fifty percent of  
19 the annual rent of such dwelling.

20 § 5. Subdivision (A) of section 207 of the eminent domain procedure  
21 law, as amended by chapter 356 of the laws of 1982, is amended to read  
22 as follows:

23 (A) Any person or persons jointly or severally, aggrieved by the  
24 condemnor's determination and findings made pursuant to section two  
25 hundred four of this article, may seek judicial review thereof by the  
26 appellate division of the supreme court, in the judicial department  
27 embracing the county wherein the proposed facility is located by the  
28 filing of a petition in such court within [~~thirty~~ ninety days after the  
29 condemnor's completion of its publication of its determination and find-  
30 ings pursuant to section two hundred four [~~herein~~ of this article. Such  
31 petition shall be accompanied by proof of service of a demand on the  
32 condemnor to file with said court a copy of a written transcript of the  
33 record of the proceeding before it, and a copy of its determination and  
34 findings. Upon receipt of such petition and demand, the condemnor shall  
35 forthwith deliver to the court a copy of the record and a copy of its  
36 determination and findings. The proceeding shall be heard on the record  
37 without requirement of reproduction. If such proposed public improvement  
38 is located in more than one judicial department such proceeding may be  
39 brought in any one, but only one of such departments and all such  
40 proceedings with relation to any single public project shall be consol-  
41 idated with that first filed. If the condemnor substantially alters the  
42 scope of the project or the determination and findings, then the condem-  
43 nee shall have an additional ninety days from the condemnor's publica-  
44 tion of such alteration, which publication is hereby required, to seek  
45 judicial review under this section.

46 § 6. Section 1411 of the not-for-profit corporation law is amended by  
47 adding a new paragraph (j) to read as follows:

48 (j) The local legislative body of each city, town, or village in which  
49 any part of the real property to be acquired is located shall have the  
50 authority to approve or disapprove any corporation's use of eminent  
51 domain. Each such local legislative body shall approve or disapprove any  
52 proposed corporate use of the power of eminent domain by majority vote.  
53 Where applicable in the enactment of local laws, the chief executive  
54 officer of such locality if the office of such chief executive officer  
55 is elective shall approve or disapprove such governing body's decision,  
56 subject to any applicable right to override.

1 § 7. The general municipal law is amended by adding a new section  
2 858-c to read as follows:

3 § 858-c. Municipal input. The governing body of each city, town, or  
4 village for whose benefit, in whole or in part, an agency is established  
5 shall have the authority to approve or disapprove any agency use of  
6 eminent domain. Each such governing body shall approve or disapprove the  
7 use of eminent domain by majority vote. Where applicable in the enact-  
8 ment of local laws, the chief executive officer of such locality if the  
9 office of such chief executive officer is elective shall approve or  
10 disapprove such governing body's decision, subject to any applicable  
11 right to override.

12 § 8. The public authorities law is amended by adding a new section  
13 1831-b to read as follows:

14 § 1831-b. Exercise of power of eminent domain; limitations. The local  
15 legislative body of each city, town, or village in which the authority  
16 seeks to exercise the power of eminent domain shall have the authority  
17 to approve or disapprove any exercise of such power by the authority.  
18 Every such local legislative body shall approve or disapprove any exer-  
19 cise of such power by majority vote. Where applicable in the enactment  
20 of local laws, the chief executive officer of such locality if the  
21 office of such chief executive officer is elective shall approve or  
22 disapprove such local legislative body's decision, subject to any appli-  
23 cable right to override.

24 § 9. A temporary commission on eminent domain reform is hereby created  
25 to examine, evaluate, and make recommendations concerning the scope and  
26 effectiveness of the eminent domain procedure law.

27 1. Legislative findings and intent. The legislature hereby finds and  
28 declares that eminent domain is an important tool for government to move  
29 forward on important public projects. However, there needs to be a thor-  
30 ough examination to determine how public projects that are primarily  
31 economic development projects affect homeowners. There needs to be a  
32 balance between the needs of society and the constitutional power of  
33 government to exercise its eminent domain powers, and the constitutional  
34 liberty and property rights of the people.

35 2. A temporary state commission, to be known as the commission on  
36 eminent domain reform, hereinafter referred to as the commission, is  
37 hereby created to examine, evaluate, and make recommendations concerning  
38 the scope and effectiveness of the eminent domain procedure law and the  
39 legislature's grant to certain public and other entities to exercise the  
40 power of eminent domain. Specifically the commission shall examine at  
41 least the following:

42 (a) the appropriate constitutional standard for condemnation  
43 proceedings used for the economic development where private homeowners  
44 are affected; and

45 (b) the procedural fairness of the eminent domain procedure laws.

46 3. The commission shall consist of thirteen members, to be appointed  
47 as follows: three members to be appointed by the governor; three members  
48 to be appointed by the temporary president of the senate; three members  
49 to be appointed by the speaker of the assembly; one member to be  
50 appointed by the minority leader of the senate; one member to be  
51 appointed by the minority leader of the assembly; one member shall be  
52 appointed by the comptroller, and one member shall be appointed by the  
53 attorney general. The appointees shall have demonstrated expertise in  
54 the field of eminent domain law. The governor shall designate the chair-  
55 person and vice-chairperson of the commission. Vacancies in the member-

1 ship of the commission and among its officers shall be filled in the  
2 manner provided for original appointments or designations.

3 4. The members of the commission shall receive no compensation for  
4 their services, but shall be allowed their actual and necessary expenses  
5 incurred in the performance of their duties hereunder. To the maximum  
6 extent feasible, the commission shall be entitled to request and receive  
7 and shall utilize and be provided with such facilities, resources, and  
8 data of any court, department, division, board, bureau, commission, or  
9 agency of the state or any political subdivision thereof as it deems  
10 necessary or desirable to carry out properly its powers and duties here-  
11 under.

12 5. The commission may employ and at pleasure remove such personnel as  
13 it may deem necessary for the performance of its functions and fix their  
14 compensation within the amounts made available therefor.

15 6. The commission may meet within and without the state, shall hold  
16 public hearings, and shall have all the powers of a legislative commit-  
17 tee pursuant to the legislative law.

18 7. The commission shall submit its findings and recommendations in a  
19 report to the governor, the temporary president of the senate, and the  
20 speaker of the assembly not later than one year after it first convenes.

21 § 10. The sum of one hundred thousand dollars (\$100,000), or so much  
22 thereof as may be necessary, is hereby appropriated to pay the expenses  
23 incurred, including personal service, in carrying out the provisions of  
24 section nine of this act. Such moneys shall be payable out of the state  
25 treasury in the general fund to the credit of the state purposes account  
26 after audit by and on the warrant of the comptroller upon vouchers  
27 certified or approved by the chairperson or vice-chairperson of the  
28 commission as prescribed by law.

29 § 11. This act shall take effect on the one hundred twentieth day  
30 after it shall have become a law; provided that sections nine and ten of  
31 this act shall take effect immediately; provided further that section  
32 nine of this act shall expire and be deemed repealed on the first day  
33 next succeeding the date of the submission of the report as provided in  
34 subdivision seven of such section; and provided further, however that  
35 the chairperson of the temporary commission on eminent domain reform  
36 shall notify the legislative bill drafting commission upon the  
37 submission of its report as provided for in subdivision seven of section  
38 nine of this act in order that the commission may maintain an accurate  
39 and timely effective data base of the official text of the laws of the  
40 state of New York in furtherance of effecting the provisions of section  
41 44 of the legislative law and section 70-b of the public officers law.