

3295

2009-2010 Regular Sessions

I N A S S E M B L Y

January 26, 2009

Introduced by M. of A. BRADLEY, COLTON, FIELDS, BENEDETTO, CLARK, ESPAILLAT, PERRY, LATIMER, HOOPER -- Multi-Sponsored by -- M. of A. ALFANO, BARRA, BRENNAN, DelMONTE, GALEF, LUPARDO, PAULIN, PHEFFER, WEISENBERG -- read once and referred to the Committee on Judiciary

AN ACT to amend the eminent domain procedure law, in relation to the determination of just compensation

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

1 Section 1. Section 501 of the eminent domain procedure law is amended  
2 to read as follows:

3 S 501. Jurisdiction. (A) The court of claims shall have exclusive  
4 jurisdiction to hear and determine all claims arising from the acquisi-  
5 tion of real property by or in the name of the people of the state of  
6 New York, or when jurisdiction is specifically conferred upon it by  
7 statute.

8 (B) In all claims arising from the acquisition of real property other  
9 than as provided in subdivision (A) OR (C) of this section, the supreme  
10 court, held in the judicial district where the real property or any  
11 portion thereof is situated, shall have exclusive jurisdiction to hear  
12 and determine all claims arising from the acquisition of real property  
13 and shall hear such claims without a jury or without referral to a  
14 referee or commissioners.

15 (C) IN ALL CLAIMS ARISING FROM THE ACQUISITION OF REAL PROPERTY OF A  
16 PRIVATE RESIDENCE OR OF A BUSINESS WITH GROSS RECEIPTS OF LESS THAN ONE  
17 MILLION DOLLARS, THE OWNER OF SUCH RESIDENCE OR BUSINESS MAY ELECT TO  
18 HAVE HIS OR HER CASE HEARD BY MEANS OF A JURY TRIAL.

19 S 2. Section 512 of the eminent domain procedure law is amended to  
20 read as follows:

21 S 512. Decision of the court OR JURY. [The] IN NON-JURY TRIALS, THE  
22 court, after hearing the testimony and weighing the evidence, shall  
23 determine the JUST compensation due the condemnees for damages as the

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

LBD03279-01-9

1 result of the acquisition. IN JURY TRIALS, THE JURY, AFTER HEARING THE  
2 TESTIMONY AND WEIGHING THE EVIDENCE, SHALL DETERMINE THE JUST COMPEN-  
3 SATION DUE THE CONDEMNES AS A RESULT OF THE ACQUISITION. FOR PURPOSES  
4 OF THIS ARTICLE, JUST COMPENSATION SHALL BE MEASURED BY FAIR MARKET  
5 REPLACEMENT VALUE, WHICH SHALL BE AT LEAST EQUAL TO THE ACTUAL COST OF  
6 PURCHASING AN EQUIVALENT PROPERTY IN A SIMILARLY SITUATED LOCATION WITH  
7 A SIMILAR STRUCTURE ON THE PROPERTY. FOR PURPOSES OF DETERMINING JUST  
8 COMPENSATION FOR THE TAKING OF A BUSINESS, THE RELIANCE BY THE BUSINESS  
9 UPON THE ACTUAL LOCATION SHALL BE CONSIDERED, INCLUDING THE POTENTIAL  
10 ECONOMIC LOSS OF THE BUSINESS'S CLIENT BASE. The court's decision shall  
11 be in compliance with section four thousand two hundred thirteen of the  
12 civil practice law and rules.

13 S 3. Section 701 of the eminent domain procedure law, as amended by  
14 chapter 771 of the laws of 1987, is amended to read as follows:

15 S 701. Additional allowance. In ALL instances [where the order or  
16 award is substantially in excess of the amount of the condemnor's proof  
17 and where deemed necessary by the court for the condemnee to achieve  
18 just and adequate compensation] UNDER SECTION FIVE HUNDRED ONE OF THIS  
19 CHAPTER, the court, upon application, notice and an opportunity for  
20 hearing, [may in its discretion,] SHALL award to the condemnee an addi-  
21 tional amount, separately computed and stated, for actual and necessary  
22 costs, disbursements and expenses, including reasonable attorney,  
23 appraiser and engineer fees actually AND NECESSARILY incurred by such  
24 condemnee. The application shall include affidavits of the condemnee and  
25 all parties that have incurred expenses on the condemnee's behalf,  
26 setting forth inter alia the amount of the expenses incurred AND THE  
27 REASONS FOR THE PERFORMANCE OF THEIR SERVICES.

28 S 4. Subdivision (A) of section 702 of the eminent domain procedure  
29 law is amended to read as follows:

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

32 (1) any recording fees, transfer taxes and other similar expenses in  
33 connection with the acquisition of the property by the condemnor or in  
34 connection with the transfer of the property to the condemnor; and

35 (2) any penalty incurred by the condemnee for prepayment of any preex-  
36 isting recorded mortgage entered into in good faith, encumbering such  
37 property; and

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

43 (4) REASONABLE MOVING AND RELOCATION EXPENSES; AND

44 (5) CLOSING COSTS ASSOCIATED WITH THE PURCHASE OF A NEW PROPERTY; AND

45 (6) ANY INCIDENTAL COSTS INCURRED AS A RESULT OF HAVING TO MOVE AND  
46 REOPEN A BUSINESS.

47 S 5. This act shall take effect immediately and shall apply to any  
48 condemnation that occurs after such effective date.