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

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I N A S S E M B L Y

(PREFILED)

January 6, 2010

Introduced by M. of A. PAULIN, COLTON, FIELDS, BENEDETTO, CLARK, ESPAILLAT, PERRY, LATIMER, HOOPER, JAFFEE, SKARTADOS -- Multi-Sponsored by -- M. of A. ALFANO, BARRA, BRENNAN, DelMONTE, GALEF, LUPARDO, 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:

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

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

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

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

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

S 512. Decision of the court OR JURY. [The] IN NON-JURY TRIALS, THE court, after hearing the testimony and weighing the evidence, shall determine the JUST compensation due the condemnees for damages as the result of the acquisition. IN JURY TRIALS, THE JURY, AFTER HEARING THE TESTIMONY AND WEIGHING THE EVIDENCE, SHALL DETERMINE THE JUST COMPEN-

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

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SATION DUE THE CONDEMNEES AS A RESULT OF THE ACQUISITION. FOR PURPOSES OF THIS ARTICLE, JUST COMPENSATION SHALL BE MEASURED BY FAIR MARKET REPLACEMENT VALUE, WHICH SHALL BE AT LEAST EQUAL TO THE ACTUAL COST OF PURCHASING AN EQUIVALENT PROPERTY IN A SIMILARLY SITUATED LOCATION WITH A SIMILAR STRUCTURE ON THE PROPERTY. FOR PURPOSES OF DETERMINING JUST COMPENSATION FOR THE TAKING OF A BUSINESS, THE RELIANCE BY THE BUSINESS UPON THE ACTUAL LOCATION SHALL BE CONSIDERED, INCLUDING THE POTENTIAL ECONOMIC LOSS OF THE BUSINESS'S CLIENT BASE. The court's decision shall be in compliance with section four thousand two hundred thirteen of the civil practice law and rules.

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

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

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

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

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

(2) any penalty incurred by the condemnee for prepayment of any preexisting recorded mortgage entered into in good faith, encumbering such property; and

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

(4) REASONABLE MOVING AND RELOCATION EXPENSES; AND

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

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

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