

S. 239

A. 339

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

(PREFILED)

January 7, 2009

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

IN ASSEMBLY -- Introduced by M. of A. THIELE -- read once and referred to the Committee on Local Governments

AN ACT to amend the general municipal law, in relation to the acquisition of property by eminent domain

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

1 Section 1. The general municipal law is amended by adding a new
2 section 360-a to read as follows:
3 S 360-A. ACQUISITION OF PROPERTY BY EMINENT DOMAIN. 1. NOTWITHSTAND-
4 ING THE PROVISIONS OF THE EMINENT DOMAIN PROCEDURE LAW, THE PROVISIONS
5 OF THIS SECTION SHALL APPLY TO THE ACQUISITION OF PROPERTY FOR THE
6 PURPOSES ENUMERATED IN SECTION THREE HUNDRED SIXTY OF THIS ARTICLE BY
7 THE POWER OF EMINENT DOMAIN, PROVIDED, HOWEVER, TO THE EXTENT THAT
8 PROVISIONS HEREIN DO NOT SUPERSEDE OR CONFLICT WITH THE PROVISIONS OF
9 THE EMINENT DOMAIN PROCEDURE LAW, THE PROVISIONS OF SUCH LAW SHALL
10 APPLY.
11 2. WHEN ANY REAL PROPERTY IS SOUGHT TO BE ACQUIRED BY THE EXERCISE OF
12 THE POWER OF EMINENT DOMAIN, AND AFTER THE MUNICIPAL CORPORATION SHALL
13 HAVE ENTERED INTO NEGOTIATIONS FOR THE PURCHASE OF SUCH PROPERTY, THE
14 MUNICIPAL CORPORATION SHALL CAUSE A SURVEY AND MAP TO BE MADE THEREOF
15 AND SHALL CAUSE SUCH SURVEY AND MAP TO BE FILED IN ITS OFFICE AND IN THE
16 OFFICE OF THE COUNTY CLERK IN THE COUNTY IN WHICH SUCH PROPERTY IS
17 LOCATED. THERE SHALL BE ANNEXED TO SUCH SURVEY AND MAP A CERTIFICATE
18 EXECUTED BY THE CHIEF EXECUTIVE OFFICER OF THE MUNICIPAL CORPORATION OR
19 BY SUCH OTHER OFFICER OR EMPLOYEE AS MAY BE DESIGNATED BY THE GOVERNING

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

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1 BOARD, STATING THAT THE PROPERTY OR INTEREST THEREIN DESCRIBED IN SUCH
2 SURVEY AND MAP IS NECESSARY FOR ITS PURPOSE.

3 3. UPON FILING SUCH SURVEY AND MAP, THE MUNICIPAL CORPORATION SHALL
4 PETITION A SPECIAL TERM OF THE SUPREME COURT IN THE JUDICIAL DISTRICT IN
5 WHICH THE PROPERTY IS LOCATED FOR THE ACQUISITION OF SUCH PROPERTY OR
6 INTEREST THEREIN. SUCH PETITION SHALL DESCRIBE THE PROPERTY BEING
7 ACQUIRED, THE VALUATION DATE, AS DETERMINED BY THE MUNICIPAL CORPO-
8 RATION, AND SUCH ADDITIONAL INFORMATION AS THE MUNICIPAL CORPORATION MAY
9 REASONABLY DEEM NECESSARY TO FACILITATE THE PROCESS OF CONDEMNATION AND
10 PAYMENT. THE PETITION SHALL STATE THAT THE MUNICIPAL CORPORATION WILL
11 ELECT WHETHER OR NOT TO PAY THE AMOUNT OF SUCH AWARD WHEN IT HAS BEEN
12 FINALLY DETERMINED. IN ALL OTHER RESPECTS, SUCH PETITION SHALL BE GENER-
13 ALLY IN THE FORM PRESCRIBED BY THE EMINENT DOMAIN PROCEDURE LAW, SO FAR
14 AS CONSISTENT HERewith. SUCH PETITION, TOGETHER WITH A NOTICE OF PENDEN-
15 CY OF THE PROCEEDING, SHALL BE FILED IN THE OFFICE OF THE COUNTY CLERK
16 OF THE COUNTY IN WHICH THE PROPERTY IS LOCATED AND SHALL BE INDEXED AND
17 RECORDED AS PROVIDED BY LAW. A COPY OF SUCH PETITION, TOGETHER WITH A
18 NOTICE OF THE PRESENTATION THEREOF TO SUCH SPECIAL TERM OF THE SUPREME
19 COURT, SHALL BE SERVED UPON THE OWNERS OF SUCH PROPERTY AS PROVIDED IN
20 THE EMINENT DOMAIN PROCEDURE LAW. THE MUNICIPAL CORPORATION MAY CAUSE A
21 DUPLICATE ORIGINAL AFFIDAVIT OF THE SERVICE THEREOF TO BE RECORDED IN
22 THE BOOKS USED FOR THE RECORDING OF DEEDS IN THE OFFICE OF THE COUNTY
23 CLERK OF THE COUNTY IN WHICH THE PROPERTY DESCRIBED IN SUCH NOTICE IS
24 LOCATED, AND THE RECORDING OF SUCH AFFIDAVIT SHALL BE PRIMA FACIE
25 EVIDENCE OF DUE SERVICE THEREOF.

26 4. SUBSEQUENT PROCEEDINGS SHALL BE CONDUCTED GENERALLY IN THE MANNER
27 PRESCRIBED IN THE EMINENT DOMAIN PROCEDURE LAW EXCEPT TO THE EXTENT THE
28 PROVISIONS THEREOF ARE INCONSISTENT WITH THE PROVISIONS OF THIS ARTICLE,
29 IN WHICH CASE THE PROVISIONS OF THIS ARTICLE SHALL CONTROL.

30 5. IN ANY PROCEEDING INVOLVING THE VALUATION OF PROPERTY TAKEN BY THE
31 MUNICIPAL CORPORATION THE SUPREME COURT SHALL ASCERTAIN AND DETERMINE
32 JUST COMPENSATION FOR THE PROPERTY TAKEN AS OF THE VALUATION DATE,
33 GIVING DUE CONSIDERATION TO ANY APPLICABLE FINDINGS AND DETERMINATIONS
34 OF THE LEGISLATURE.

35 6. SHOULD PROPERTY BE TAKEN BY THE EXERCISE OF THE POWER OF EMINENT
36 DOMAIN AND IF THE OWNER SHALL HAVE AGREED UPON THE COMPENSATION TO BE
37 PAID THEREFOR IN SETTLEMENT OF THE PROCEEDING, THEN THE OWNER SHALL BE
38 ENTITLED TO PAYMENT OF THE AGREED UPON OR AWARDED COMPENSATION WITHIN
39 ONE HUNDRED EIGHTY DAYS AFTER THE DATE OF THE AGREEMENT UPON THE AMOUNT
40 OF THE COMPENSATION OR OF THE ENTRY OF THE AWARD, TOGETHER WITH INTEREST
41 UPON THE AMOUNT OF SUCH COMPENSATION FROM THE TIME OF ACQUISITION THERE-
42 OF BY THE MUNICIPAL CORPORATION TO THE DATE OF PAYMENT OF SUCH COMPEN-
43 SATION; BUT SUCH INTEREST SHALL CEASE UPON THE SERVICE BY THE MUNICIPAL
44 CORPORATION, UPON THE PERSON OR CORPORATION ENTITLED THERETO, OF A
45 FIFTEEN DAYS' NOTICE THAT THE MUNICIPAL CORPORATION IS READY AND WILLING
46 TO PAY THE AMOUNT OF SUCH COMPENSATION UPON THE PRESENTATION OF PROPER
47 PROOFS AND VOUCHERS. SUCH NOTICE SHALL BE SERVED PERSONALLY OR BY REGIS-
48 TERED MAIL AND PUBLICATION THEREOF SHALL BE MADE AT LEAST ONCE A WEEK
49 FOR THREE CONSECUTIVE WEEKS IN A DAILY NEWSPAPER OF GENERAL CIRCULATION
50 IN THE COUNTY IN WHICH SUCH PROPERTY OR ANY PART THEREOF IS LOCATED.

51 7. UPON THE ENTRY OF AN AWARD FINALLY DETERMINING JUST COMPENSATION
52 FOR THE PROPERTY, THE MUNICIPAL CORPORATION SHALL HAVE SIXTY DAYS AFTER
53 RECEIPT OF NOTICE OF ENTRY OF SUCH AWARD WITHIN WHICH TO ELECT TO
54 PROCEED WITH THE TAKING OR TO ABANDON SUCH ACQUISITION AS PROVIDED IN
55 SUBDIVISION NINE OF THIS SECTION. NOTICE OF SUCH ELECTION SHALL BE
56 SERVED BY THE MUNICIPAL CORPORATION ON THE OWNERS OF SUCH PROPERTY IN

1 THE MANNER PRESCRIBED IN SUBDIVISION THREE OF THIS SECTION. IF THE
2 MUNICIPAL CORPORATION ELECTS TO PROCEED WITH THE ACQUISITION, IT SHALL
3 DEPOSIT WITH THE SUPREME COURT IN WHICH THE CONDEMNATION PROCEEDING WAS
4 HELD AN AMOUNT EQUAL TO THE AWARD WITHIN ONE HUNDRED EIGHTY DAYS AFTER
5 RECEIPT BY THE MUNICIPAL CORPORATION OF NOTICE OF ENTRY OF SUCH AWARD.
6 UPON THE MAKING OF SUCH DEPOSIT, THE MUNICIPAL CORPORATION SHALL NOTIFY
7 THE OWNER IN WRITING OF SUCH DEPOSIT. THE SUM SO DEPOSITED SHALL BE
8 APPLIED AS PROVIDED IN THE EMINENT DOMAIN PROCEDURE LAW. UPON MAKING
9 SUCH DEPOSIT AND GIVING SUCH NOTICE TO THE OWNER, TITLE TO ALL PROPERTY
10 DESCRIBED IN THE NOTICE OF TAKING SHALL IMMEDIATELY VEST IN THE MUNICI-
11 PAL CORPORATION AND THE MUNICIPAL CORPORATION SHALL HAVE IMMEDIATE RIGHT
12 THERETO. THE ORDER SETTING FORTH THE AWARD, TOGETHER WITH THE EVIDENCE
13 FROM THE CLERK OF THE COURT OF RECEIPT OF THE AMOUNT OF THE AWARD, SHALL
14 BE FILED IN THE OFFICE OF THE COUNTY CLERK OF THE COUNTY IN WHICH THE
15 PROPERTY IS LOCATED AND SHALL BE INDEXED AND RECORDED IN THE SAME MANNER
16 AS A NOTICE OF PENDENCY UNDER THE EMINENT DOMAIN PROCEDURE LAW. THE
17 OWNER OR PERSON IN POSSESSION OF SUCH PROPERTY SHALL DELIVER POSSESSION
18 THEREOF TO THE MUNICIPAL CORPORATION UPON DEMAND, AND IN CASE POSSESSION
19 IS NOT DELIVERED WHEN DEMANDED OR DEMAND IS NOT CONVENIENT BECAUSE OF
20 ABSENCE OF THE OWNER OR INABILITY TO LOCATE OR DETERMINE THE OWNER, THE
21 MUNICIPAL CORPORATION MAY APPLY TO THE COURT WITHOUT NOTICE FOR AN ORDER
22 REQUIRING THE SHERIFF TO PUT IT INTO POSSESSION OF SUCH REAL PROPERTY.
23 SUCH AN ORDER SHALL BE EXECUTED AS IF IT WERE AN EXECUTION FOR THE
24 DELIVERY OF THE POSSESSION OF THE PROPERTY. IN THE EVENT THE MUNICIPAL
25 CORPORATION ELECTS TO ABANDON THE ACQUISITION, THE PROVISIONS OF SUBDI-
26 VISION NINE OF THIS SECTION SHALL APPLY.

27 8. AT ANY TIME THE MUNICIPAL CORPORATION AND ITS DULY AUTHORIZED
28 AGENTS AND EMPLOYEES MAY, ON REASONABLE NOTICE AND DURING BUSINESS
29 HOURS, ENTER UPON ANY REAL PROPERTY PROPOSED TO BE ACQUIRED FOR THE
30 PURPOSE OF MAKING THE SURVEYS OR MAPS MENTIONED IN THIS SECTION, OR OF
31 MAKING SUCH OTHER SURVEYS, INSPECTIONS OR EXAMINATIONS OF REAL OR
32 PERSONAL PROPERTY AS THE MUNICIPAL CORPORATION MAY DEEM NECESSARY OR
33 CONVENIENT FOR THE PURPOSES OF THIS ARTICLE.

34 9. IF THE MUNICIPAL CORPORATION DETERMINES, IN ITS SOLE DISCRETION,
35 THAT THE TOTAL COST OF ACQUISITION WILL EXCEED THE MAXIMUM COST PROVIDED
36 FOR IN THE RESOLUTION ADOPTED PURSUANT TO SUBDIVISION THREE OF SECTION
37 THREE HUNDRED SIXTY OF THIS ARTICLE, THE MUNICIPAL CORPORATION MAY ABAN-
38 DON THE ACQUISITION. IN SUCH EVENT, THE MUNICIPAL CORPORATION SHALL
39 SERVE NOTICE OF SUCH ABANDONMENT IN THE SAME MANNER AS PROVIDED FOR THE
40 SERVICE OF A PETITION FOR ACQUISITION PURSUANT TO SUBDIVISION THREE OF
41 THIS SECTION. IN ADDITION, THE MUNICIPAL CORPORATION SHALL FILE A COPY
42 OF THE NOTICE OF ABANDONMENT WITH THE COUNTY CLERK OF THE COUNTY IN
43 WHICH IS LOCATED ANY REAL PROPERTY THAT WAS TAKEN AND WITH THE CLERK OF
44 THE SUPREME COURT IN WHICH THE PROCEEDING WAS INSTITUTED.

45 S 2. This act shall take effect on the sixtieth day after it shall
46 have become a law.