

4500

2009-2010 Regular Sessions

I N   A S S E M B L Y

February 4, 2009

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Introduced by M. of A. BRODSKY, LUPARDO -- Multi-Sponsored by -- M. of  
A. CLARK, LATIMER -- read once and referred to the Committee on Judi-  
ciary

AN ACT to provide for the creation of a temporary state commission to  
examine eminent domain laws and make recommendations for further  
reforms; and making an appropriation therefor

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

1     Section 1. A temporary commission on eminent domain reform is hereby  
2     created to examine, evaluate, and make recommendations concerning the  
3     scope and effectiveness of the eminent domain procedure law.  
4     1. Legislative findings and intent. The legislature hereby finds and  
5     declares that eminent domain is an important tool for government to move  
6     forward on important public projects. However, there needs to be a thor-  
7     ough examination of the eminent domain procedure law to determine if any  
8     changes need to be made to current law to clarify the rights of property  
9     owners. There needs to be a balance between the needs of society and  
10    the constitutional power of government to exercise its eminent domain  
11    powers, and the constitutional liberty and property rights of the  
12    people.  
13    2. A temporary state commission, to be known as the commission on  
14    eminent domain reform, hereinafter referred to as the commission, is  
15    hereby created to examine, evaluate, and make recommendations concerning  
16    the scope and effectiveness of the eminent domain procedure law and the  
17    legislature's grant to certain public and other entities to exercise the  
18    power of eminent domain. Specifically the commission shall examine at  
19    least the following:  
20    (a) the appropriate constitutional standard for condemnation  
21    proceedings used for economic development purposes;  
22    (b) the procedural fairness of the eminent domain procedure laws,  
23    including statutory definitions thereunder;

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

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1 (c) the need for the creation of an eminent domain ombudsman to serve  
2 as an independent office to safeguard the rights of property owners and  
3 provide information regarding the eminent domain procedure law; and

4 (d) just compensation provided to affected property owners.

5 3. The commission shall consist of thirteen members, to be appointed  
6 as follows: seven members to be appointed by the governor; three of  
7 which shall be representatives of local governments and three shall be  
8 property rights advocates to be appointed by and with the advice and  
9 consent of the senate; two members to be appointed by the temporary  
10 president of the senate; two members to be appointed by the speaker of  
11 the assembly; one member to be appointed by the minority leader of the  
12 senate; one member to be appointed by the minority leader of the assem-  
13 bly. The appointees shall have demonstrated expertise in the field of  
14 eminent domain law. The governor shall designate the chairperson and  
15 vice-chairperson of the commission. Vacancies in the membership of the  
16 commission and among its officers shall be filled in the manner provided  
17 for original appointments or designations. The legislative leaders and  
18 the governor shall make his or her appointments no later than ninety  
19 days after the effective date of this act. If any such appointment is  
20 not made by such date, the appointing officer may make the appointment  
21 after such date, but the vacant appointment shall not count for calcu-  
22 lation of a quorum until it is filled. Vacancies in the commission shall  
23 be filled in the same manner as the member whose vacancy is being filled  
24 was appointed.

25 4. The members of the commission shall receive no compensation for  
26 their services, but shall be allowed their actual and necessary expenses  
27 incurred in the performance of their duties hereunder. To the maximum  
28 extent feasible, the commission shall be entitled to request and receive  
29 and shall utilize and be provided with such facilities, resources, and  
30 data of any court, department, division, board, bureau, commission, or  
31 agency of the state or any political subdivision thereof as it deems  
32 necessary or desirable to carry out properly its powers and duties here-  
33 under.

34 5. The commission shall begin to act ninety days after the effective  
35 date of this act. A quorum shall consist of a majority of the members of  
36 the commission entitled to vote on the matter under consideration.  
37 Approval of any matter shall require the affirmative vote of a majority  
38 of the members voting thereon.

39 6. The commission may employ and at pleasure remove such personnel as  
40 it may deem necessary for the performance of its functions and fix their  
41 compensation within the amounts made available therefor.

42 7. The commission may meet within and without the state, shall hold  
43 public hearings, and shall have all the powers of a legislative commit-  
44 tee pursuant to the legislative law.

45 8. The commission shall submit its findings and recommendations in a  
46 report to the governor, the temporary president of the senate, and the  
47 speaker of the assembly not later than one year after it first convenes.

48 S 2. The sum of one hundred thousand dollars (\$100,000), or so much  
49 thereof as may be necessary, is hereby appropriated to pay the expenses  
50 incurred, including personal service, in carrying out the provisions of  
51 subdivision six of section one of this act. Such moneys shall be payable  
52 out of the state treasury in the general fund to the credit of the state  
53 purposes account after audit by and on the warrant of the comptroller  
54 upon vouchers certified or approved by the chairperson or vice-chairper-  
55 son of the commission as prescribed by law.

1 S 3. This act shall take effect immediately; provided further that the  
2 temporary state commission established pursuant to section one of this  
3 act shall expire and be terminated on the first day next succeeding the  
4 date of the submission of its report as provided in subdivision eight of  
5 section one of this act; and provided further, however that the chair-  
6 person of the temporary commission on eminent domain reform shall notify  
7 the legislative bill drafting commission upon the submission of its  
8 report as provided for in subdivision eight of section one of this act  
9 in order that the commission may maintain an accurate and timely effec-  
10 tive data base of the official text of the laws of the state of New York  
11 in furtherance of effecting the provisions of section 44 of the legisla-  
12 tive law and section 70-b of the public officers law.