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

4500

2009-2010 Regular Sessions

I N A S S E M B L Y

February 4, 2009

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

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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. A temporary commission on eminent domain reform is hereby created to examine, evaluate, and make recommendations concerning the scope and effectiveness of the eminent domain procedure law.

1. Legislative findings and intent. The legislature hereby finds and declares that eminent domain is an important tool for government to move forward on important public projects. However, there needs to be a thorough examination of the eminent domain procedure law to determine if any changes need to be made to current law to clarify the rights of property owners. There needs to be a balance between the needs of society and the constitutional power of government to exercise its eminent domain powers, and the constitutional liberty and property rights of the people.

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

(a) the appropriate constitutional standard for condemnation proceedings used for economic development purposes;

(b) the procedural fairness of the eminent domain procedure laws, including statutory definitions thereunder;

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

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

(d) just compensation provided to affected property owners.

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

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

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

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

7. The commission may meet within and without the state, shall hold public hearings, and shall have all the powers of a legislative committee pursuant to the legislative law.

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

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

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