

2635

2011-2012 Regular Sessions

I N A S S E M B L Y

January 19, 2011

Introduced by M. of A. FITZPATRICK -- read once and referred to the
Committee on Judiciary

AN ACT to amend the real property law, in relation to the real property
regulatory impacts act

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

1 Section 1. The real property law is amended by adding a new article
2 12-D to read as follows:

3 ARTICLE 12-D
4 REAL PROPERTY REGULATORY IMPACTS ACT

5 SECTION 447-A. SHORT TITLE.

6 447-B. DEFINITIONS.

7 447-C. ATTORNEY GENERAL RULE REVIEW.

8 447-D. DIMINUTION IN VALUE.

9 447-E. INVALIDATION.

10 447-F. STATUTE OF LIMITATIONS.

11 447-G. CONSTITUTIONAL OR STATUTORY RIGHTS NOT RESTRICTED.

12 S 447-A. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS
13 THE "REAL PROPERTY REGULATORY IMPACTS ACT".

14 S 447-B. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE, THE FOLLOWING
15 TERMS SHALL HAVE THE FOLLOWING MEANINGS:

16 1. "DIMINUTION IN VALUE OF FIFTY PERCENT OR MORE" MEANS A FIFTY
17 PERCENT REDUCTION IN THE FAIR MARKET VALUE OF THE REAL PROPERTY SUBJECT
18 TO ANY STATE STATUTE, REGULATION OR RULE, OR TO THE DENIAL OF ANY
19 PERMIT, LICENSE OR AUTHORIZATION BY THE STATE.

20 2. "INVERSE CONDEMNATION" MEANS A SUIT AGAINST THE STATE TO RECOVER
21 MONEY DAMAGES EQUAL TO THE DIMINUTION IN THE FAIR MARKET VALUE OF THE
22 PROPERTY.

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

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1 3. "OWNER" MEANS THE OWNER OF THE REAL PROPERTY AT THE TIME THE STATE
2 STATUTE, REGULATION OR RULE TOOK EFFECT, OR THE OWNER AT THE TIME THAT
3 THE PERMIT, LICENSE OR AUTHORIZATION WAS DENIED BY THE STATE.

4 4. "TAKING OF PRIVATE PROPERTY" MEANS AN ACTIVITY WHEREIN PRIVATE
5 PROPERTY IS TAKEN SUCH THAT COMPENSATION TO THE OWNER OF THAT PROPERTY
6 IS REQUIRED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION
7 OF THE UNITED STATES OR BY SECTION FOUR HUNDRED FORTY-SEVEN-D OF THIS
8 ARTICLE.

9 5. "PERSON" MEANS A PERSON OR PERSONS HAVING AN INTEREST WHICH IS OR
10 MAY BE ADVERSELY AFFECTED BY THE STATUTE, REGULATION OR RULE, OR BY THE
11 PROVISION OR CONDITION OF ANY PERMIT, LICENSE OR AUTHORIZATION.

12 S 447-C. ATTORNEY GENERAL RULE REVIEW. NO RULE OR REGULATION PROMUL-
13 GATED BY ANY STATE AGENCY, DIVISION, BOARD OR COMMISSION SHALL BECOME
14 EFFECTIVE UNTIL THE ATTORNEY GENERAL HAS REVIEWED SUCH RULE OR REGU-
15 LATION AND HAS INFORMED THE ISSUING ENTITY IN WRITING AS TO THE POTEN-
16 TIAL OF SUCH RULE OR REGULATION TO RESULT IN A TAKING OF PRIVATE PROPER-
17 TY.

18 S 447-D. DIMINUTION IN VALUE. 1. CAUSE OF ACTION. THE OWNER OF ANY
19 REAL PROPERTY MAY BRING AN ACTION AGAINST THE STATE WHENEVER THE APPLI-
20 CATION OF ANY STATE STATUTE, RULE OR REGULATION TO SUCH REAL PROPERTY,
21 OR THE DENIAL OF ANY PERMIT, LICENSE OR AUTHORIZATION OF ANY KIND BY THE
22 STATE CAUSES A DIMINUTION IN VALUE OF THE PROPERTY OF FIFTY PERCENT OR
23 MORE.

24 2. JURISDICTION. SUCH ACTION MAY BE FILED IN SUPREME COURT WHICH SHALL
25 HAVE EXCLUSIVE JURISDICTION OF THE CLAIM, AND THE OWNER SHALL BE ENTI-
26 TLED TO A TRIAL BY JURY. IN SUCH ACTION, THE OWNER MAY EITHER RECOVER:

27 (A) A SUM EQUAL TO THE DIMINUTION IN VALUE OF THE REAL PROPERTY, AND
28 RETAIN TITLE THERETO; OR

29 (B) THE ENTIRE FAIR MARKET VALUE OF THE REAL PROPERTY PRIOR TO THE
30 DIMINUTION IN VALUE OF FIFTY PERCENT OR MORE, AND TRANSFER TITLE TO THE
31 STATE UPON PAYMENT OF SUCH FAIR MARKET VALUE. IN ANY SUCH ACTION, THE
32 COURT MAY AWARD REASONABLE AND NECESSARY COSTS, INCLUDING ATTORNEY FEES,
33 TO ANY PREVAILING PLAINTIFF. IF THE STATUTE, RULE OR REGULATION IS
34 RESCINDED, OR IF THE PERMIT, LICENSE OR AUTHORIZATION IS GRANTED, PRIOR
35 TO FINAL JUDGMENT, THEN THE OWNER SHALL BE ENTITLED TO RECOVER IN THE
36 PENDING ACTION ANY REASONABLE AND NECESSARY COSTS, INCLUDING ATTORNEY
37 FEES, INCURRED TO DATE, TOGETHER WITH ANY ECONOMIC LOSSES SUSTAINED BY
38 REASON OF THE ACTS GIVING RISE TO THE DIMINUTION IN VALUE. IT SHALL BE
39 AN AFFIRMATIVE DEFENSE TO ANY SUCH ACTION IF THE OWNER'S USE OR PROPOSED
40 USE OF THE REAL PROPERTY AMOUNTS TO A PUBLIC NUISANCE WHICH SHALL BE
41 DEFINED AS A SUBSTANTIAL AND UNREASONABLE INTERFERENCE WITH THE USE AND
42 ENJOYMENT OF AN INTEREST IN LAND WHICH IS COMMON TO THE PUBLIC.

43 S 447-E. INVALIDATION. 1. CAUSE OF ACTION. ANY PERSON MAY COMMENCE A
44 CIVIL ACTION IN SUPREME COURT ON HIS OR HER OWN BEHALF AGAINST THE STATE
45 TO INVALIDATE ANY STATUTE, RULE OR REGULATION PERTAINING TO REAL PROPER-
46 TY, OR TO INVALIDATE ANY PROVISION OR CONDITION OF ANY PERMIT, LICENSE
47 OR AUTHORIZATION WHICH DOES NOT SUBSTANTIALLY ADVANCE ITS STATED GOVERN-
48 MENTAL PURPOSE.

49 2. RIPENESS. A SUIT FOR INVALIDATION SHALL BE RIPE FOR ADJUDICATION
50 UPON THE ENACTMENT OF THE STATUTE, REGULATION OR RULE, OR THE IMPOSITION
51 OF ANY PROVISION OR CONDITION OF ANY PERMIT, LICENSE OR AUTHORIZATION TO
52 ANY PARCEL OF REAL PROPERTY.

53 S 447-F. STATUTE OF LIMITATIONS. 1. APPLICATION. THE PROVISIONS OF
54 THIS ARTICLE SHALL APPLY TO STATE STATUTES, RULES AND REGULATIONS AND
55 ANY PROVISION OR CONDITION OF ANY PERMIT, LICENSE OR AUTHORIZATION, IN
56 EFFECT ON OR AFTER THE EFFECTIVE DATE OF THIS ARTICLE.

1 2. STATUTE OF LIMITATIONS. THE STATUTE OF LIMITATIONS FOR ACTIONS
2 BROUGHT PURSUANT TO THIS ARTICLE SHALL BE SIX YEARS FROM THE ENACTMENT
3 OF ANY STATUTE, REGULATION OR RULE, OR THE DENIAL OF ANY PERMIT, LICENSE
4 OR AUTHORIZATION BY THE STATE.

5 S 447-G. CONSTITUTIONAL OR STATUTORY RIGHTS NOT RESTRICTED. NOTHING IN
6 THIS ARTICLE SHALL RESTRICT ANY REMEDY OR RIGHT WHICH ANY PERSON OR
7 CLASS OF PERSONS MAY HAVE UNDER ANY PROVISION OF THE STATE OR FEDERAL
8 CONSTITUTION OR LAWS OF THE STATE OR UNITED STATES.

9 S 2. This act shall take effect immediately.