

3366

2011-2012 Regular Sessions

I N A S S E M B L Y

January 25, 2011

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

AN ACT to amend the public authorities law, the not-for-profit corporation law, the general municipal law and the eminent domain procedure law, in relation to eminent domain reform

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "eminent domain reform act".
3 S 2. The public authorities law is amended by adding a new section
4 1831-b to read as follows:
5 S 1831-B. EXERCISE OF POWER OF EMINENT DOMAIN; LIMITATIONS. THE LOCAL
6 LEGISLATIVE BODY OF EACH CITY, TOWN, OR VILLAGE IN WHICH THE AUTHORITY
7 SEEKS TO EXERCISE THE POWER OF EMINENT DOMAIN SHALL HAVE THE AUTHORITY
8 TO APPROVE OR DISAPPROVE ANY EXERCISE OF SUCH POWER BY THE AUTHORITY.
9 EVERY SUCH LOCAL LEGISLATIVE BODY SHALL APPROVE OR DISAPPROVE ANY EXER-
10 CISE OF SUCH POWER BY MAJORITY VOTE. WHERE APPLICABLE IN THE ENACTMENT
11 OF LOCAL LAWS, THE CHIEF EXECUTIVE OFFICER OF SUCH LOCALITY IF THE
12 OFFICE OF SUCH CHIEF EXECUTIVE OFFICER IS ELECTIVE SHALL APPROVE OR
13 DISAPPROVE SUCH LOCAL LEGISLATIVE BODY'S DECISION, SUBJECT TO ANY APPLI-
14 CABLE RIGHT TO OVERRIDE.
15 S 3. Paragraph (i) of section 1411 of the not-for-profit corporation
16 law is relettered paragraph (j) and a new paragraph (i) is added to read
17 as follows:
18 (I) MUNICIPAL INPUT. THE LOCAL LEGISLATIVE BODY OF EACH CITY, TOWN,
19 OR VILLAGE IN WHICH ANY PART OF THE REAL PROPERTY TO BE ACQUIRED IS
20 LOCATED SHALL HAVE THE AUTHORITY TO APPROVE OR DISAPPROVE ANY CORPO-
21 RATION'S USE OF EMINENT DOMAIN. EACH SUCH LOCAL LEGISLATIVE BODY SHALL
22 APPROVE OR DISAPPROVE ANY PROPOSED CORPORATE USE OF THE POWER OF EMINENT
23 DOMAIN BY MAJORITY VOTE. WHERE APPLICABLE IN THE ENACTMENT OF LOCAL
24 LAWS, THE CHIEF EXECUTIVE OFFICER OF SUCH LOCALITY IF THE OFFICE OF SUCH

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

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1 CHIEF EXECUTIVE OFFICER IS ELECTIVE SHALL APPROVE OR DISAPPROVE SUCH
2 GOVERNING BODY'S DECISION, SUBJECT TO ANY APPLICABLE RIGHT TO OVERRIDE.

3 S 4. The general municipal law is amended by adding a new section
4 858-c to read as follows:

5 S 858-C. MUNICIPAL INPUT. THE GOVERNING BODY OF EACH CITY, TOWN, OR
6 VILLAGE FOR WHOSE BENEFIT, IN WHOLE OR IN PART, AN AGENCY IS ESTABLISHED
7 SHALL HAVE THE AUTHORITY TO APPROVE OR DISAPPROVE ANY AGENCY USE OF
8 EMINENT DOMAIN. EACH SUCH GOVERNING BODY SHALL APPROVE OR DISAPPROVE THE
9 USE OF EMINENT DOMAIN BY MAJORITY VOTE. WHERE APPLICABLE IN THE ENACT-
10 MENT OF LOCAL LAWS, THE CHIEF EXECUTIVE OFFICER OF SUCH LOCALITY IF THE
11 OFFICE OF SUCH CHIEF EXECUTIVE OFFICER IS ELECTIVE SHALL APPROVE OR
12 DISAPPROVE SUCH GOVERNING BODY'S DECISION, SUBJECT TO ANY APPLICABLE
13 RIGHT TO OVERRIDE.

14 S 5. Section 103 of the eminent domain procedure law is amended by
15 adding two new subdivisions (H) and (I) to read as follows:

16 (H) "ECONOMIC DEVELOPMENT PROJECT" MEANS ANY PROJECT FOR WHICH ACQUI-
17 SITION OF REAL PROPERTY MAY BE REQUIRED FOR A PUBLIC USE, BENEFIT, OR
18 PURPOSE WHERE SUCH PUBLIC USE, BENEFIT, OR PURPOSE IS PRIMARILY FOR
19 ECONOMIC DEVELOPMENT AND WHERE THE CONDEMNEE'S REAL PROPERTY IS A HOME
20 OR DWELLING.

21 (I) FOR THE PURPOSES OF ARTICLE TWO OF THIS CHAPTER:

22 (1) "HOME" MEANS OWNER-OCCUPIED RESIDENTIAL PREMISES CONSISTING OF NOT
23 MORE THAN SIX DWELLING UNITS.

24 (2) "DWELLING" MEANS RESIDENTIAL PREMISES CONSISTING OF NOT MORE THAN
25 THIRTY DWELLING UNITS, NONE OF WHICH IS OCCUPIED BY AN OWNER OF SUCH
26 PREMISES.

27 (3) IN THE CASE OF COOPERATIVE APARTMENT CORPORATIONS, TITLE TO THAT
28 PORTION OF REAL PROPERTY OWNED BY A COOPERATIVE APARTMENT CORPORATION IN
29 WHICH A TENANT-STOCKHOLDER OF SUCH CORPORATION RESIDES, AND WHICH IS
30 REPRESENTED BY HIS OR HER SHARE OR SHARES OF STOCK IN SUCH CORPORATION
31 AS DETERMINED BY ITS OR THEIR PROPORTIONAL RELATIONSHIP TO THE TOTAL
32 OUTSTANDING STOCK OF THE CORPORATION, INCLUDING THAT OWNED BY THE CORPO-
33 RATION, SHALL BE DEEMED TO BE VESTED IN SUCH TENANT-STOCKHOLDER NOTWITH-
34 STANDING THE NUMBER OF DWELLING UNITS IN SUCH RESIDENTIAL PREMISES, THUS
35 QUALIFYING A COOPERATIVE APARTMENT AS A HOME.

36 S 6. Subdivision (B) of section 204 of the eminent domain procedure
37 law is amended to read as follows:

38 (B) The condemnor, in its determination and findings, shall specify,
39 but shall not be limited to the following:

40 (1) the public use, benefit or purpose to be served by the proposed
41 public project;

42 (2) the approximate location for the proposed public project and the
43 reasons for the selection of that location;

44 (3) the general effect of the proposed project on the environment and
45 residents of the locality;

46 (4) A DECLARATION TO SUCH EFFECT IF THE PRIMARY PUBLIC PURPOSE IS
47 DETERMINED TO BE FOR ECONOMIC DEVELOPMENT WHERE ONE OR MORE CONDEMNEDS'
48 HOMES OR DWELLINGS ARE TO BE AFFECTED; AND

49 (5) such other factors as it considers relevant.

50 S 7. The eminent domain procedure law is amended by adding a new
51 section 204-a to read as follows:

52 S 204-A. ECONOMIC DEVELOPMENT CONDEMNATION FINDINGS AND HOMEOWNER
53 PROTECTION. (A) IF THE CONDEMNOR DETERMINES PURSUANT TO PARAGRAPH FOUR
54 OF SUBDIVISION (B) OF SECTION TWO HUNDRED FOUR OF THIS ARTICLE THAT THE
55 PRIMARY PUBLIC PURPOSE OR BENEFIT IS FOR ECONOMIC DEVELOPMENT, THE
56 CONDEMNOR, IN COOPERATION WITH THE GOVERNMENT OF THE LOCALITY IN WHICH

1 THE REAL PROPERTY TO BE ACQUIRED IS LOCATED SHALL PREPARE A COMPREHEN-
2 SIVE ECONOMIC DEVELOPMENT PLAN FOR THE AFFECTED AREA. THE COMPREHENSIVE
3 ECONOMIC DEVELOPMENT PLAN SHALL INCLUDE, BUT NOT BE LIMITED TO, THE
4 ACTUAL OR EXPECTED BENEFITS OF THE PROJECT, INCLUDING THE EXPECTED
5 INCREASED TAX REVENUE OR EXPECTED CREATION OF JOBS, THE TYPES OF BUSI-
6 NESSES OR INDUSTRY THAT WILL USE THE CONDEMNED PROPERTY, AND ALTERNA-
7 TIVES TO THE PLAN. WHEN A DRAFT COMPREHENSIVE ECONOMIC DEVELOPMENT PLAN
8 IS CREATED, THE CONDEMNOR, IN COOPERATION WITH THE GOVERNMENT OF THE
9 LOCALITY IN WHICH THE REAL PROPERTY TO BE ACQUIRED IS LOCATED SHALL HOLD
10 AT LEAST ONE PUBLIC HEARING TO COMPILE AND ANALYZE PUBLIC INPUT. THE
11 PUBLIC HEARING SHALL BE HELD IN ACCORDANCE WITH THE PROVISIONS OF THIS
12 ARTICLE AT A LOCATION REASONABLY PROXIMATE TO THE REAL PROPERTY WHICH
13 MAY BE ACQUIRED FOR SUCH PROJECT. THEREAFTER, THE CONDEMNOR SHALL
14 COMPLETE A FINAL COMPREHENSIVE ECONOMIC DEVELOPMENT PLAN TO BE SUBMITTED
15 TO THE LOCAL LEGISLATIVE BODY, SUBJECT TO ANY APPLICABLE RIGHT TO OVER-
16 RIDE FOR ITS APPROVAL. TO MOVE FORWARD WITH THE PROJECT, THE LOCAL
17 LEGISLATIVE BODY MUST APPROVE THE PLAN BY A MAJORITY VOTE, AND IT MUST
18 ALSO BE APPROVED BY THE CHIEF EXECUTIVE OFFICER OF SUCH LOCALITY IF THE
19 OFFICE OF SUCH CHIEF EXECUTIVE OFFICER IS ELECTIVE.

20 (B) THE CONDEMNOR SHALL ALSO CREATE A HOMEOWNER IMPACT ASSESSMENT
21 STATEMENT. THE CONDEMNOR, IN THE HOMEOWNER IMPACT ASSESSMENT STATEMENT,
22 SHALL ASSESS THE ACTUAL HARM TO AFFECTED CONDEMNEES' THAT WOULD LOSE
23 THEIR HOMES OR DWELLINGS AND COMPARE SUCH HARM WITH THE REASONABLY
24 EXPECTED COMMUNITY BENEFITS, INCLUDING BUT NOT LIMITED TO HOW THE
25 CONDEMNOR JUSTIFIES THE TAKING OF THE CONDEMNEES' HOMES OR DWELLINGS.
26 THE HOMEOWNER IMPACT ASSESSMENT STATEMENT SHALL BE COMPLETED SIMULTANE-
27 OUSLY WITH THE COMPREHENSIVE ECONOMIC DEVELOPMENT PLAN UNDER SUBDIVISION
28 (A) OF THIS SECTION. THE HOMEOWNER IMPACT ASSESSMENT STATEMENT SHALL BE
29 MADE WIDELY AVAILABLE.

30 (C) IN CASES WHERE A CONDEMNEE'S HOME OR DWELLING IS ACQUIRED FOR AN
31 ECONOMIC DEVELOPMENT PROJECT, THE CONDEMNOR SHALL, IN ADDITION TO ANY
32 OTHER COMPENSATION REQUIREMENTS UNDER THIS ARTICLE, COMPENSATE THE
33 CONDEMNEE A MINIMUM OF ONE HUNDRED FIFTY PERCENT OF THE FAIR MARKET
34 VALUE OF THE REAL PROPERTY. RESIDENTS WHO ARE DISPLACED BY THE ECONOMIC
35 DEVELOPMENT PROJECT SHALL ALSO BE COMPENSATED AT LEAST ONE HUNDRED FIFTY
36 PERCENT OF THE ANNUAL RENT OF SUCH DWELLING.

37 S 8. Subdivision (A) of section 207 of the eminent domain procedure
38 law, as amended by chapter 356 of the laws of 1982, is amended to read
39 as follows:

40 (A) Any person or persons jointly or severally, aggrieved by the
41 condemnor's determination and findings made pursuant to section two
42 hundred four of this article, may seek judicial review thereof by the
43 appellate division of the supreme court, in the judicial department
44 embracing the county wherein the proposed facility is located by the
45 filing of a petition in such court within [thirty] NINETY days after the
46 condemnor's completion of its publication of its determination and find-
47 ings pursuant to section two hundred four [herein] OF THIS ARTICLE. Such
48 petition shall be accompanied by proof of service of a demand on the
49 condemnor to file with said court a copy of a written transcript of the
50 record of the proceeding before it, and a copy of its determination and
51 findings. Upon receipt of such petition and demand, the condemnor shall
52 forthwith deliver to the court a copy of the record and a copy of its
53 determination and findings. The proceeding shall be heard on the record
54 without requirement of reproduction. If such proposed public improvement
55 is located in more than one judicial department, such proceeding may be
56 brought in any one, but only one, of such departments, and all such

1 proceedings with relation to any single public project shall be consol-
2 idated with that first filed. IF THE CONDEMNOR SUBSTANTIALLY ALTERS THE
3 SCOPE OF THE PROJECT OR THE DETERMINATION AND FINDINGS, THEN THE CONDEM-
4 NEE SHALL HAVE AN ADDITIONAL NINETY DAYS FROM THE CONDEMNOR'S PUBLICA-
5 TION OF SUCH ALTERATION, WHICH PUBLICATION IS HEREBY REQUIRED, TO SEEK
6 JUDICIAL REVIEW UNDER THIS SECTION.
7 S 9. This act shall take effect on the one hundred twentieth day after
8 it shall have become a law.