

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. PAULIN, COLTON, BENEDETTO, CLARK, PERRY, LATIMER, HOOPER, JAFFEE -- Multi-Sponsored by -- M. of A. BRENNAN, GALEF, LUPARDO, PHEFFER, WEISENBERG -- read once and referred to the Committee on Judiciary

AN ACT to amend the eminent domain procedure law, in relation to the determination of just compensation

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

1 Section 1. Section 501 of the eminent domain procedure law is amended
2 to read as follows:

3 S 501. Jurisdiction. (A) The court of claims shall have exclusive
4 jurisdiction to hear and determine all claims arising from the acquisi-
5 tion of real property by or in the name of the people of the state of
6 New York, or when jurisdiction is specifically conferred upon it by
7 statute.

8 (B) In all claims arising from the acquisition of real property other
9 than as provided in subdivision (A) OR (C) of this section, the supreme
10 court, held in the judicial district where the real property or any
11 portion thereof is situated, shall have exclusive jurisdiction to hear
12 and determine all claims arising from the acquisition of real property
13 and shall hear such claims without a jury or without referral to a
14 referee or commissioners.

15 (C) IN ALL CLAIMS ARISING FROM THE ACQUISITION OF REAL PROPERTY OF A
16 PRIVATE RESIDENCE OR OF A BUSINESS WITH GROSS RECEIPTS OF LESS THAN ONE
17 MILLION DOLLARS, THE OWNER OF SUCH RESIDENCE OR BUSINESS MAY ELECT TO
18 HAVE HIS OR HER CASE HEARD BY MEANS OF A JURY TRIAL.

19 S 2. Section 512 of the eminent domain procedure law is amended to
20 read as follows:

21 S 512. Decision of the court OR JURY. [The] IN NON-JURY TRIALS, THE
22 court, after hearing the testimony and weighing the evidence, shall

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

1 determine the JUST compensation due the condemnees for damages as the
2 result of the acquisition. IN JURY TRIALS, THE JURY, AFTER HEARING THE
3 TESTIMONY AND WEIGHING THE EVIDENCE, SHALL DETERMINE THE JUST COMPEN-
4 SATION DUE THE CONDEMNES AS A RESULT OF THE ACQUISITION. FOR PURPOSES
5 OF THIS ARTICLE, JUST COMPENSATION SHALL BE MEASURED BY FAIR MARKET
6 REPLACEMENT VALUE, WHICH SHALL BE AT LEAST EQUAL TO THE ACTUAL COST OF
7 PURCHASING AN EQUIVALENT PROPERTY IN A SIMILARLY SITUATED LOCATION WITH
8 A SIMILAR STRUCTURE ON THE PROPERTY. FOR PURPOSES OF DETERMINING JUST
9 COMPENSATION FOR THE TAKING OF A BUSINESS, THE RELIANCE BY THE BUSINESS
10 UPON THE ACTUAL LOCATION SHALL BE CONSIDERED, INCLUDING THE POTENTIAL
11 ECONOMIC LOSS OF THE BUSINESS'S CLIENT BASE. The court's decision shall
12 be in compliance with section four thousand two hundred thirteen of the
13 civil practice law and rules.

14 S 3. Section 701 of the eminent domain procedure law, as amended by
15 chapter 771 of the laws of 1987, is amended to read as follows:

16 S 701. Additional allowance. In ALL instances [where the order or
17 award is substantially in excess of the amount of the condemnor's proof
18 and where deemed necessary by the court for the condemnee to achieve
19 just and adequate compensation] UNDER SECTION FIVE HUNDRED ONE OF THIS
20 CHAPTER, the court, upon application, notice and an opportunity for
21 hearing, [may in its discretion,] SHALL award to the condemnee an addi-
22 tional amount, separately computed and stated, for actual and necessary
23 costs, disbursements and expenses, including reasonable attorney,
24 appraiser and engineer fees actually AND NECESSARILY incurred by such
25 condemnee. The application shall include affidavits of the condemnee and
26 all parties that have incurred expenses on the condemnee's behalf,
27 setting forth inter alia the amount of the expenses incurred AND THE
28 REASONS FOR THE PERFORMANCE OF THEIR SERVICES.

29 S 4. Subdivision (A) of section 702 of the eminent domain procedure
30 law is amended to read as follows:

31 (A) The condemnor shall reimburse a condemnee an amount separately
32 computed and stated, representing the following incidental expenses:

33 (1) any recording fees, transfer taxes and other similar expenses in
34 connection with the acquisition of the property by the condemnor or in
35 connection with the transfer of the property to the condemnor; and

36 (2) any penalty incurred by the condemnee for prepayment of any preex-
37 isting recorded mortgage entered into in good faith, encumbering such
38 property; and

39 (3) the pro rata portion of the real property taxes, water rents,
40 sewer rents, special ad valorem taxes and other charges paid or payable
41 to a taxing entity which are allocable to a period subsequent to the
42 date of vesting title or the effective date of possession of such prop-
43 erty in the condemnor, whichever is earlier[.]; AND

44 (4) REASONABLE MOVING AND RELOCATION EXPENSES; AND

45 (5) CLOSING COSTS ASSOCIATED WITH THE PURCHASE OF A NEW PROPERTY; AND

46 (6) ANY INCIDENTAL COSTS INCURRED AS A RESULT OF HAVING TO MOVE AND
47 REOPEN A BUSINESS.

48 S 5. This act shall take effect immediately and shall apply to any
49 condemnation that occurs after such effective date.