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

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2011-2012 Regular Sessions

I N S E N A T E

February 2, 2011

Introduced by Sens. DeFRANCISCO, LARKIN -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the eminent domain procedure law, in relation to the use of eminent domain

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

Section 1. Section 104 of the eminent domain procedure law is amended to read as follows:

S 104. Applicability. The eminent domain procedure law shall be uniformly applied to any and all acquisitions by eminent domain of real property within the state of New York. EMINENT DOMAIN SHALL ONLY BE USED FOR PUBLIC PROJECTS INCLUDING FOR THE PURPOSE OF ESTABLISHING, LAYING OUT, EXTENDING AND WIDENING STREETS, AVENUES, BOULEVARDS, ALLEYS, AND OTHER PUBLIC HIGHWAYS AND ROADS; FOR PUMPING STATIONS, WATERWORKS, RESERVOIRS, WELLS, JAILS, POLICE AND FIRE STATIONS, CITY HALLS, OFFICE AND OTHER PUBLIC BUILDINGS INCLUDING SCHOOLS, CEMETERIES, PARKS, PLAYGROUNDS AND PUBLIC SQUARES, PUBLIC OFF-STREET PARKING FACILITIES AND ACCOMMODATIONS, LAND FROM WHICH TO OBTAIN EARTH, GRAVEL, STONES, AND OTHER MATERIAL FOR THE CONSTRUCTION OF ROADS AND OTHER PUBLIC WORKS AND FOR RIGHT-OF-WAY FOR DRAINS, SEWERS, PIPE LINES, AQUEDUCTS, AND OTHER CONDUITS FOR DISTRIBUTING WATER TO THE PUBLIC; FOR FLOOD CONTROL; FOR HOUSING; FOR USE BY THE GOVERNMENT OF THE UNITED STATES; FOR RAILROADS, CANALS AND NAVIGABLE WATERWAYS, AIRPORTS AND OTHER PUBLIC TRANSPORTATION FACILITIES AND SERVICES; FOR WATER POWER, PUBLIC UTILITIES OR OTHER PRODUCTION AND TRANSMISSION OF HEAT, LIGHT OR POWER; FOR RECREATION, CONSERVATION, OPEN SPACE AND HISTORIC, ENVIRONMENTAL AND CULTURAL RESOURCE PROTECTION, AND SOLID WASTE MANAGEMENT; FOR RIVER REGULATION OR MANAGEMENT; FOR PUBLIC HOSPITALS AND HEALTH CARE FACILITIES; FOR RECLAMATION OF SWAMP LANDS AND TO TAKE SUCH EXCESS OVER THAT NEEDED FOR SUCH PUBLIC USE OR PUBLIC IMPROVEMENT IN CASES WHERE SMALL REMNANTS WOULD OTHERWISE BE LEFT OR WHERE OTHER JUSTIFIABLE CAUSE NECESSITATES THE

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

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TAKING TO PROTECT AND PRESERVE THE CONTEMPLATED IMPROVEMENT OR PUBLIC POLICY DEMANDS, THE TAKING IN CONNECTION WITH THE IMPROVEMENT, AND TO SELL OR LEASE THE EXCESS PROPERTY WITH SUCH RESTRICTIONS AS MAY BE DICTATED BY CONSIDERATIONS OF PUBLIC POLICY IN ORDER TO PROTECT AND PRESERVE THE IMPROVEMENT; PROVIDED THAT WHEN THE EXCESS PROPERTY IS DISPOSED OF IT SHALL BE FIRST OFFERED TO THE ABUTTING OWNERS FOR A REASONABLE LENGTH OF TIME AND AT A REASONABLE PRICE AND IF SUCH OWNERS FAIL TO TAKE THE EXCESS PROPERTY THEN IT MAY BE SOLD AT PUBLIC AUCTION.

S 2. The eminent domain procedure law is amended by adding a new section 204-a to read as follows:

S 204-A. VOTE BY LOCAL GOVERNMENT. AFTER ANY INDUSTRIAL DEVELOPMENT AGENCY APPROVES THE USE OF EMINENT DOMAIN, THE GOVERNING BODY OF THE MUNICIPALITY: (A) FOR WHOSE BENEFIT THE AGENCY WAS CREATED, AND (B) WHERE THE PROPERTY PROPOSED TO BE CONDEMNED IS LOCATED, SHALL VOTE TO DETERMINE WHETHER OR NOT TO CONDEMN THE PROPERTY. FOR PURPOSES OF THIS SECTION, THE TERMS "MUNICIPALITY" SHALL MEAN ANY COUNTY, TOWN, CITY OR VILLAGE IN THE STATE; AND "GOVERNING BOARD" SHALL MEAN THE BODY IN WHICH THE GENERAL LEGISLATIVE POWERS OF THE MUNICIPALITY ARE VESTED, INCLUDING THE BOARD OF SUPERVISORS OF A COUNTY, THE TOWN BOARD OF A TOWN, THE COMMON COUNCIL OF A CITY, THE CITY COUNCIL, IF THE PROPERTY IS LOCATED IN A COUNTY WHOLLY CONTAINED WITHIN A CITY WITH A POPULATION OF ONE MILLION OR MORE, AND THE BOARD OF TRUSTEES OF A VILLAGE.

S 3. Subdivision (A) of section 702 of the eminent domain procedure law is amended to read as follows:

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

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

(2) any penalty incurred by the condemnee for prepayment of any preexisting recorded mortgage entered into in good faith, encumbering such property; [and]

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

(4) ANY RELOCATION COSTS INCURRED IN CONNECTION WITH THE ACQUISITION OF THE PROPERTY BY THE CONDEMNOR OR IN CONNECTION WITH THE TRANSFER OF THE PROPERTY TO THE CONDEMNOR.

S 4. This act shall take effect immediately and shall apply to any eminent domain procedures commenced on or after such date.