

4685

2011-2012 Regular Sessions

I N S E N A T E

April 14, 2011

Introduced by Sen. FLANAGAN -- read twice and ordered printed, and when printed to be committed to the Committee on Commerce, Economic Development and Small Business

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

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

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LAWS, THE CHIEF EXECUTIVE OFFICER OF SUCH LOCALITY IF THE OFFICE OF SUCH CHIEF EXECUTIVE OFFICER IS ELECTIVE SHALL APPROVE OR DISAPPROVE SUCH GOVERNING BODY'S DECISION, SUBJECT TO ANY APPLICABLE RIGHT TO OVERRIDE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) such other factors as it considers relevant.

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

S 204-A. ECONOMIC DEVELOPMENT CONDEMNATION FINDINGS AND HOMEOWNER PROTECTION. (A) IF THE CONDEMNOR DETERMINES PURSUANT TO PARAGRAPH FOUR OF SUBDIVISION (B) OF SECTION TWO HUNDRED FOUR OF THIS ARTICLE THAT THE PRIMARY PUBLIC PURPOSE OR BENEFIT IS FOR ECONOMIC DEVELOPMENT, THE

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

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

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

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

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

1 brought in any one, but only one, of such departments, and all such
2 proceedings with relation to any single public project shall be consol-
3 idated with that first filed. IF THE CONDEMNOR SUBSTANTIALLY ALTERS THE
4 SCOPE OF THE PROJECT OR THE DETERMINATION AND FINDINGS, THEN THE CONDEM-
5 NEE SHALL HAVE AN ADDITIONAL NINETY DAYS FROM THE CONDEMNOR'S PUBLICA-
6 TION OF SUCH ALTERATION, WHICH PUBLICATION IS HEREBY REQUIRED, TO SEEK
7 JUDICIAL REVIEW UNDER THIS SECTION.

8 S 9. This act shall take effect on the one hundred twentieth day after
9 it shall have become a law.