

4919

2011-2012 Regular Sessions

I N S E N A T E

April 29, 2011

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and
when printed to be committed to the Committee on Transportation

AN ACT to amend the highway law, in relation to requiring county highway
acquisitions to be made pursuant to the eminent domain procedure law;
and to repeal sections 121, 122 and 123 of such law relating thereto

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

1 Section 1. Subdivisions 1, 2, 3, 4, 6 and 7 of section 118 of the
2 highway law, subdivisions 1, 2 and 3 as added by chapter 786 of the laws
3 of 1944, subdivision 4 as amended by chapter 1110 of the laws of 1971,
4 subdivision 6 as added by chapter 258 of the laws of 1953 and subdivi-
5 sion 7 as added by chapter 913 of the laws of 1960, are amended to read
6 as follows:
7 1. If a county road, proposed to be constructed or improved as
8 provided in this article, or which shall have been heretofore
9 constructed, or which it is proposed to repair or reconstruct as
10 provided in this article or in which it is proposed to change the course
11 of a dangerous section thereof, shall deviate from the line of a highway
12 already existing, the board of supervisors of the county where such
13 highway is located shall provide the requisite right-of-way prior to the
14 advertisement for proposals. The execution by the property owner of an
15 option to purchase, or of a release or agreement giving the county the
16 right to enter and occupy property for highway purposes shall be deemed
17 to be a sufficient acquisition of right-of-way under this article, and
18 upon the certification of the board of supervisors that the county has
19 secured such options, releases or agreements from the reputed owners of
20 all parcels of right-of-way called for by the plans, the county super-
21 intendent may proceed to advertise for proposals for the improvement.
22 The board of supervisors shall also secure all necessary rights-of-way
23 for drains or ditches required to properly drain the highway either
24 during construction or after completion thereof and may also acquire

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

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1 lands for the purpose of obtaining gravel, stone or other material, when
2 required for the construction, reconstruction, improvement or maintenance of such highways, or for spoil banks, together with a right-of-way
3 to such spoil banks and to any bed, pit, quarry or other place where
4 such gravel, stone or other material may be located. ALL SUCH
5 RIGHT-OF-WAY ACQUISITIONS HEREIN LISTED ARE TO BE MADE PURSUANT TO THE
6 EMINENT DOMAIN PROCEDURE LAW.

7
8 2. The board of supervisors may also acquire lands, PURSUANT TO THE
9 EMINENT DOMAIN PROCEDURE LAW, at any corner formed by the intersection
10 of highways, for the purpose of removing obstructions therefrom which
11 shut off the view to intersecting highways; thereby to afford visibility
12 or sight distance of such highways near, at and across any corner of
13 lands at highway intersections.

14 3. The board of supervisors may also acquire lands, PURSUANT TO THE
15 EMINENT DOMAIN PROCEDURE LAW, at any curve along county roads, for the
16 purpose of removing obstructions therefrom which shut off the view of,
17 to, over and along such highway; thereby to afford visibility or sight
18 distance at, over, along and across any such curve.

19 4. When requested by the commissioner of transportation, the board of
20 supervisors, PURSUANT TO THE EMINENT DOMAIN PROCEDURE LAW, shall also
21 provide lands or rights or interests therein, including designation of
22 controlled-access highways pursuant to section one hundred seventeen-b
23 of this chapter, for rights of way and other purposes mentioned in this
24 section, which the commissioner of transportation shall require pursuant
25 to the provisions of sections eighty-one and eighty-four of this chapter.
26 The execution by the property owner of an option to purchase, or
27 of a release or agreement giving the state or the county the right to
28 enter and occupy property for highway purposes shall be deemed to be
29 sufficient acquisition of rights of way under this section, and upon the
30 certification of the board of supervisors to the commissioner of transportation
31 that the county has acquired options, releases or agreements
32 from the reputed owners of all parcels of rights of way and all rights
33 and interests deemed necessary, or has commenced [condemnation] EMINENT
34 DOMAIN proceedings with respect thereto, the commissioner of transportation
35 may proceed to advertise for proposals for the improvement.

36 6. In the construction, reconstruction or improvement of a county road
37 where an existing entrance or approach to private lands is wholly or
38 partially destroyed as a result of a substantial change in the existing
39 grade, or for any other reason, the board of supervisors or a committee
40 thereof authorized to acquire the necessary rights of way for said county
41 road, may, upon the request of the abutting property owner affected,
42 cause the reestablishment of the entrance, approach or driveway to be
43 adjusted to the grade of the new road, and the cost thereof shall be a
44 county charge payable out of the county road fund. In such adjustment,
45 the details of the work shall be as determined by the county superintendent
46 of highways. The county shall not be liable for the maintenance of
47 such adjusted and reestablished approaches or driveways upon the lands
48 of such abutting property owners, nor shall it be liable for damages in
49 connection therewith after the completion of such adjustment work.

50 7. Within appropriations made for the construction and maintenance of
51 county roads, and upon recommendation of the county superintendent of
52 highways or upon its own motion, when it finds such action necessary in
53 the interest of the public safety and welfare, because of density of
54 population, proximity of schools and the volume of vehicular and pedestrian
55 traffic the board of supervisors of a county may cause sidewalks
56 for pedestrians to be constructed along any county road either in

1 conjunction with or subsequent to the construction of such road and, if
2 necessary, may acquire for such purpose property or easements thereto
3 pursuant TO THE EMINENT DOMAIN PROCEDURE LAW AND to the provisions of
4 article six of this chapter.

5 S 2. The opening and closing paragraphs of section 118-b of the high-
6 way law, as added by chapter 546 of the laws of 1954, are amended to
7 read as follows:

8 The county superintendent may, when authorized by the county board AND
9 PURSUANT TO THE EMINENT DOMAIN PROCEDURE LAW, enter

10 Where lands are entered upon under the provisions of this section, the
11 county superintendent shall agree with the owner of such lands, subject
12 to the approval of the county board, as to the amount of damages, if
13 any, sustained by such owner in consequence of such entry in performance
14 of the work authorized by this section, and the amount of such damage
15 shall be a county charge. If the county superintendent is unable to
16 agree with such owner upon the amount of damages thus sustained, the
17 amount thereof shall be ascertained, determined and paid in the manner
18 that damages are so ascertained, determined and paid PURSUANT TO THE
19 EMINENT DOMAIN PROCEDURE LAW, where rights-of-way are necessary for the
20 construction, reconstruction, improvement or repair of county roads
21 generally and the board of supervisors is unable to acquire such rights-
22 of-way by purchase.

23 S 3. Section 120 of the highway law, as added by chapter 786 of the
24 laws of 1944, is amended to read as follows:

25 S 120. [Petition to acquire] ACQUISITION OF lands. [If the board of
26 supervisors is unable to acquire land by purchase as provided for in
27 section one hundred nineteen of this chapter, the board may present to
28 the county court of the county or to the supreme court, at a special
29 term thereof, to be held in the judicial department in which said county
30 is located, a petition for the appointment of three commissioners of
31 appraisal to ascertain and determine the compensation to be paid to the
32 owners of the land to be acquired and to all persons interested therein.
33 Such petition shall describe the land to be acquired with reference to
34 the map upon which the same is shown which shall be annexed to such
35 petition. A copy of such petition and map shall be filed in the office
36 of the county clerk. Such petition shall be signed and verified in the
37 name of the board of supervisors, by the chairman or a member thereof
38 designated for that purpose by resolution. Notice of presentation of
39 such petition to such court shall be given by the petitioner by publish-
40 ing such notice in two newspapers published in such county, once in each
41 week for two weeks successively preceding the day of such presentation,
42 and also at least eight days preceding the day of such presentation by
43 serving a copy of such notice, personally or by mail, on the occupant or
44 owner of the land to be acquired, and by posting a copy of said notice
45 in not less than three public places in each town in which property to
46 be acquired is located] ACQUISITION OF LAND UNABLE TO BE ACQUIRED BY
47 PURCHASE, AS PROVIDED FOR IN SECTION ONE HUNDRED NINETEEN OF THIS ARTI-
48 CLE, SHALL BE ACQUIRED PURSUANT TO THE EMINENT DOMAIN PROCEDURE LAW.

49 S 4. Sections 121, 122 and 123 of the highway law are REPEALED.

50 S 5. This act shall take effect on the sixtieth day after it shall
51 have become a law.