

2573

2011-2012 Regular Sessions

I N A S S E M B L Y

January 19, 2011

Introduced by M. of A. FITZPATRICK, TEDISCO, CALHOUN, CASTELLI --
Multi-Sponsored by -- M. of A. BARCLAY, BURLING, BUTLER, CONTE,
CROUCH, FINCH, GIGLIO, HAWLEY, KOLB, McDONOUGH, J. MILLER, OAKS,
REILICH, SALADINO, SAYWARD -- read once and referred to the Committee
on Judiciary

AN ACT to amend the eminent domain procedure law, the not-for-profit
corporation law, the general municipal law and the public authorities
law, in relation to eminent domain reform; and creating the "home and
property protection act" providing for the creation of a temporary
state commission to examine eminent domain laws and make recommenda-
tions for further reforms; and making an appropriation therefor; and
providing for the expiration of certain provisions

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

- 1 Section 1. Short title. This act shall be known and may be cited as
2 the "home and property protection act".
3 S 2. Section 103 of the eminent domain procedure law is amended by
4 adding three new subdivisions (H), (I) and (J) to read as follows:
5 (H) "ECONOMIC DEVELOPMENT PROJECT" MEANS ANY PROJECT FOR WHICH ACQUI-
6 SITION OF REAL PROPERTY MAY BE REQUIRED FOR A PUBLIC USE, BENEFIT, OR
7 PURPOSE WHERE SUCH PUBLIC USE, BENEFIT, OR PURPOSE IS PRIMARILY FOR
8 ECONOMIC DEVELOPMENT AND WHERE THE CONDEMNEE'S REAL PROPERTY IS A HOME
9 OR DWELLING.
10 (I) FOR THE PURPOSES OF ARTICLE TWO OF THIS CHAPTER:
11 (1) "HOME" MEANS OWNER-OCCUPIED RESIDENTIAL PREMISES CONSISTING OF NOT
12 MORE THAN SIX DWELLING UNITS.
13 (2) "DWELLING" MEANS RESIDENTIAL PREMISES CONSISTING OF NOT MORE THAN
14 THIRTY DWELLING UNITS, NONE OF WHICH IS OCCUPIED BY AN OWNER OF SUCH
15 PREMISES.
16 (3) IN THE CASE OF COOPERATIVE APARTMENT CORPORATIONS, TITLE TO THAT
17 PORTION OF REAL PROPERTY OWNED BY A COOPERATIVE APARTMENT CORPORATION IN

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

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1 WHICH A TENANT-STOCKHOLDER OF SUCH CORPORATION RESIDES, AND WHICH IS
2 REPRESENTED BY HIS OR HER SHARE OR SHARES OF STOCK IN SUCH CORPORATION
3 AS DETERMINED BY ITS OR THEIR PROPORTIONAL RELATIONSHIP TO THE TOTAL
4 OUTSTANDING STOCK OF THE CORPORATION, INCLUDING THAT OWNED BY THE CORPO-
5 RATION, SHALL BE DEEMED TO BE VESTED IN SUCH TENANT-STOCKHOLDER NOTWITH-
6 STANDING THE NUMBER OF DWELLING UNITS IN SUCH RESIDENTIAL PREMISES, THUS
7 QUALIFYING A COOPERATIVE APARTMENT AS A HOME.

8 (J) "BLIGHTED AREA" MEANS AN AREA IN WHICH ONE OR BOTH OF THE FOLLOW-
9 ING CONDITIONS EXIST: (I) A PREDOMINANCE OF BUILDINGS AND STRUCTURES
10 WHICH ARE DETERIORATED OR UNFIT OR UNSAFE FOR USE OR OCCUPANCY; OR (II)
11 A PREDOMINANCE OF ECONOMICALLY UNPRODUCTIVE LANDS, BUILDINGS OR STRUC-
12 TURES, THE REDEVELOPMENT OF WHICH IS NEEDED TO PREVENT FURTHER DETERI-
13 ORATION WHICH WOULD JEOPARDIZE THE ECONOMIC WELL-BEING OF THE PEOPLE.

14 S 3. Subdivision (B) of section 204 of the eminent domain procedure
15 law is amended to read as follows:

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

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

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

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

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

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

28 S 4. The eminent domain procedure law is amended by adding a new
29 section 204-a to read as follows:

30 S 204-A. ECONOMIC DEVELOPMENT CONDEMNATION FINDINGS AND HOMEOWNER
31 PROTECTION. (A) IF THE CONDEMNOR DETERMINES PURSUANT TO PARAGRAPH FOUR
32 OF SUBDIVISION (B) OF SECTION TWO HUNDRED FOUR OF THIS ARTICLE THAT THE
33 PRIMARY PUBLIC PURPOSE OR BENEFIT IS FOR ECONOMIC DEVELOPMENT, THE
34 CONDEMNOR, IN COOPERATION WITH THE GOVERNMENT OF THE LOCALITY IN WHICH
35 THE REAL PROPERTY TO BE ACQUIRED IS LOCATED SHALL PREPARE A COMPREHEN-
36 SIVE ECONOMIC DEVELOPMENT PLAN FOR THE AFFECTED AREA. THE COMPREHENSIVE
37 ECONOMIC DEVELOPMENT PLAN SHALL INCLUDE, BUT NOT BE LIMITED TO, THE
38 ACTUAL OR EXPECTED BENEFITS OF THE PROJECT, INCLUDING THE EXPECTED
39 INCREASED TAX REVENUE OR EXPECTED CREATION OF JOBS, THE TYPES OF BUSI-
40 NESSES OR INDUSTRY THAT WILL USE THE CONDEMNED PROPERTY, AND ALTERNA-
41 TIVES TO THE PLAN. WHEN A DRAFT COMPREHENSIVE ECONOMIC DEVELOPMENT PLAN
42 IS CREATED, THE CONDEMNOR, IN COOPERATION WITH THE GOVERNMENT OF THE
43 LOCALITY IN WHICH THE REAL PROPERTY TO BE ACQUIRED IS LOCATED SHALL HOLD
44 AT LEAST ONE PUBLIC HEARING TO COMPILE AND ANALYZE PUBLIC INPUT. THE
45 PUBLIC HEARING SHALL BE HELD IN ACCORDANCE WITH THE PROVISIONS OF THIS
46 ARTICLE AT A LOCATION REASONABLY PROXIMATE TO THE REAL PROPERTY WHICH
47 MAY BE ACQUIRED FOR SUCH PROJECT. THEREAFTER, THE CONDEMNOR SHALL
48 COMPLETE A FINAL COMPREHENSIVE ECONOMIC DEVELOPMENT PLAN TO BE SUBMITTED
49 TO THE LOCAL LEGISLATIVE BODY, SUBJECT TO ANY APPLICABLE RIGHT TO OVER-
50 RIDE FOR ITS APPROVAL. TO MOVE FORWARD WITH THE PROJECT, THE LOCAL
51 LEGISLATIVE BODY MUST APPROVE THE PLAN BY A MAJORITY VOTE, AND IT MUST
52 ALSO BE APPROVED BY THE CHIEF EXECUTIVE OFFICER OF SUCH LOCALITY IF THE
53 OFFICE OF SUCH CHIEF EXECUTIVE OFFICER IS ELECTIVE.

54 NOTWITHSTANDING ANY SECTION OF LAW TO THE CONTRARY, THE PROVISIONS OF
55 SUBDIVISION (A) OF THIS SECTION SHALL NOT APPLY TO A PUBLIC PROJECT
56 WHERE THE PRIMARY PUBLIC PURPOSE OR BENEFIT IS FOR ECONOMIC DEVELOPMENT

1 IF THE AREA IS A "BLIGHTED AREA" AS DEFINED UNDER SUBDIVISION (J) OF
2 SECTION ONE HUNDRED THREE OF THIS CHAPTER.

3 (B) THE CONDEMNOR SHALL ALSO CREATE A HOMEOWNER IMPACT ASSESSMENT
4 STATEMENT. THE CONDEMNOR, IN THE HOMEOWNER IMPACT ASSESSMENT STATEMENT,
5 SHALL ASSESS THE ACTUAL HARM TO AFFECTED CONDEMNEES' THAT WOULD LOSE
6 THEIR HOMES OR DWELLINGS AND COMPARE SUCH HARM WITH THE REASONABLY
7 EXPECTED COMMUNITY BENEFITS, INCLUDING BUT NOT LIMITED TO HOW THE
8 CONDEMNOR JUSTIFIES THE TAKING OF THE CONDEMNEES' HOMES OR DWELLINGS.
9 THE HOMEOWNER IMPACT ASSESSMENT STATEMENT SHALL BE COMPLETED SIMULTANE-
10 OUSLY WITH THE COMPREHENSIVE ECONOMIC DEVELOPMENT PLAN UNDER SUBDIVISION
11 (A) OF THIS SECTION. THE HOMEOWNER IMPACT ASSESSMENT STATEMENT SHALL BE
12 MADE WIDELY AVAILABLE.

13 (C) IN CASES WHERE A CONDEMNEE'S HOME OR DWELLING IS ACQUIRED FOR AN
14 ECONOMIC DEVELOPMENT PROJECT, THE CONDEMNOR SHALL, IN ADDITION TO OTHER
15 COMPENSATION REQUIREMENTS UNDER THIS ARTICLE, COMPENSATE THE CONDEMNEE A
16 MINIMUM OF ONE HUNDRED FIFTY PERCENT OF THE FAIR MARKET VALUE OF THE
17 REAL PROPERTY. RESIDENTS WHO ARE DISPLACED BY THE ECONOMIC DEVELOPMENT
18 PROJECT SHALL ALSO BE COMPENSATED AT LEAST ONE HUNDRED FIFTY PERCENT OF
19 THE ANNUAL RENT OF SUCH DWELLING.

20 S 5. Subdivision (A) of section 207 of the eminent domain procedure
21 law, as amended by chapter 356 of the laws of 1982, is amended to read
22 as follows:

23 (A) Any person or persons jointly or severally, aggrieved by the
24 condemnor's determination and findings made pursuant to section two
25 hundred four of this article, may seek judicial review thereof by the
26 appellate division of the supreme court, in the judicial department
27 embracing the county wherein the proposed facility is located by the
28 filing of a petition in such court within [thirty] NINETY days after the
29 condemnor's completion of its publication of its determination and find-
30 ings pursuant to section two hundred four [herein] OF THIS ARTICLE. Such
31 petition shall be accompanied by proof of service of a demand on the
32 condemnor to file with said court a copy of a written transcript of the
33 record of the proceeding before it, and a copy of its determination and
34 findings. Upon receipt of such petition and demand, the condemnor shall
35 forthwith deliver to the court a copy of the record and a copy of its
36 determination and findings. The proceeding shall be heard on the record
37 without requirement of reproduction. If such proposed public improvement
38 is located in more than one judicial department such proceeding may be
39 brought in any one, but only one of such departments and all such
40 proceedings with relation to any single public project shall be consol-
41 idated with that first filed. IF THE CONDEMNOR SUBSTANTIALLY ALTERS THE
42 SCOPE OF THE PROJECT OR THE DETERMINATION AND FINDINGS, THEN THE CONDEM-
43 NEE SHALL HAVE AN ADDITIONAL NINETY DAYS FROM THE CONDEMNOR'S PUBLICA-
44 TION OF SUCH ALTERATION, WHICH PUBLICATION IS HEREBY REQUIRED, TO SEEK
45 JUDICIAL REVIEW UNDER THIS SECTION.

46 S 6. Section 1411 of the not-for-profit corporation law is amended by
47 adding a new paragraph (j) to read as follows:

48 (J) THE LOCAL LEGISLATIVE BODY OF EACH CITY, TOWN, OR VILLAGE IN WHICH
49 ANY PART OF THE REAL PROPERTY TO BE ACQUIRED IS LOCATED SHALL HAVE THE
50 AUTHORITY TO APPROVE OR DISAPPROVE ANY CORPORATION'S USE OF EMINENT
51 DOMAIN. EACH SUCH LOCAL LEGISLATIVE BODY SHALL APPROVE OR DISAPPROVE ANY
52 PROPOSED CORPORATE USE OF THE POWER OF EMINENT DOMAIN BY MAJORITY VOTE.
53 WHERE APPLICABLE IN THE ENACTMENT OF LOCAL LAWS, THE CHIEF EXECUTIVE
54 OFFICER OF SUCH LOCALITY IF THE OFFICE OF SUCH CHIEF EXECUTIVE OFFICER
55 IS ELECTIVE SHALL APPROVE OR DISAPPROVE SUCH GOVERNING BODY'S DECISION,
56 SUBJECT TO ANY APPLICABLE RIGHT TO OVERRIDE.

1 S 7. The general municipal law is amended by adding a new section
2 858-c to read as follows:

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

12 S 8. The public authorities law is amended by adding a new section
13 1831-b to read as follows:

14 S 1831-B. EXERCISE OF POWER OF EMINENT DOMAIN; LIMITATIONS. THE LOCAL
15 LEGISLATIVE BODY OF EACH CITY, TOWN, OR VILLAGE IN WHICH THE AUTHORITY
16 SEEKS TO EXERCISE THE POWER OF EMINENT DOMAIN SHALL HAVE THE AUTHORITY
17 TO APPROVE OR DISAPPROVE ANY EXERCISE OF SUCH POWER BY THE AUTHORITY.
18 EVERY SUCH LOCAL LEGISLATIVE BODY SHALL APPROVE OR DISAPPROVE ANY EXER-
19 CISE OF SUCH POWER BY MAJORITY VOTE. WHERE APPLICABLE IN THE ENACTMENT
20 OF LOCAL LAWS, THE CHIEF EXECUTIVE OFFICER OF SUCH LOCALITY IF THE
21 OFFICE OF SUCH CHIEF EXECUTIVE OFFICER IS ELECTIVE SHALL APPROVE OR
22 DISAPPROVE SUCH LOCAL LEGISLATIVE BODY'S DECISION, SUBJECT TO ANY APPLI-
23 CABLE RIGHT TO OVERRIDE.

24 S 9. A temporary commission on eminent domain reform is hereby created
25 to examine, evaluate, and make recommendations concerning the scope and
26 effectiveness of the eminent domain procedure law.

27 1. Legislative findings and intent. The legislature hereby finds and
28 declares that eminent domain is an important tool for government to move
29 forward on important public projects. However, there needs to be a thor-
30 ough examination to determine how public projects that are primarily
31 economic development projects affect homeowners. There needs to be a
32 balance between the needs of society and the constitutional power of
33 government to exercise its eminent domain powers, and the constitutional
34 liberty and property rights of the people.

35 2. A temporary state commission, to be known as the commission on
36 eminent domain reform, hereinafter referred to as the commission, is
37 hereby created to examine, evaluate, and make recommendations concerning
38 the scope and effectiveness of the eminent domain procedure law and the
39 legislature's grant to certain public and other entities to exercise the
40 power of eminent domain. Specifically the commission shall examine at
41 least the following:

42 (a) the appropriate constitutional standard for condemnation
43 proceedings used for the economic development where private homeowners
44 are affected; and

45 (b) the procedural fairness of the eminent domain procedure laws.

46 3. The commission shall consist of thirteen members, to be appointed
47 as follows: three members to be appointed by the governor; three members
48 to be appointed by the temporary president of the senate; three members
49 to be appointed by the speaker of the assembly; one member to be
50 appointed by the minority leader of the senate; one member to be
51 appointed by the minority leader of the assembly; one member shall be
52 appointed by the comptroller, and one member shall be appointed by the
53 attorney general. The appointees shall have demonstrated expertise in
54 the field of eminent domain law. The governor shall designate the chair-
55 person and vice-chairperson of the commission. Vacancies in the member-

1 ship of the commission and among its officers shall be filled in the
2 manner provided for original appointments or designations.

3 4. The members of the commission shall receive no compensation for
4 their services, but shall be allowed their actual and necessary expenses
5 incurred in the performance of their duties hereunder. To the maximum
6 extent feasible, the commission shall be entitled to request and receive
7 and shall utilize and be provided with such facilities, resources, and
8 data of any court, department, division, board, bureau, commission, or
9 agency of the state or any political subdivision thereof as it deems
10 necessary or desirable to carry out properly its powers and duties here-
11 under.

12 5. The commission may employ and at pleasure remove such personnel as
13 it may deem necessary for the performance of its functions and fix their
14 compensation within the amounts made available therefor.

15 6. The commission may meet within and without the state, shall hold
16 public hearings, and shall have all the powers of a legislative commit-
17 tee pursuant to the legislative law.

18 7. The commission shall submit its findings and recommendations in a
19 report to the governor, the temporary president of the senate, and the
20 speaker of the assembly not later than one year after it first convenes.

21 S 10. The sum of one hundred thousand dollars (\$100,000), or so much
22 thereof as may be necessary, is hereby appropriated to pay the expenses
23 incurred, including personal service, in carrying out the provisions of
24 section nine of this act. Such moneys shall be payable out of the state
25 treasury in the general fund to the credit of the state purposes account
26 after audit by and on the warrant of the comptroller upon vouchers
27 certified or approved by the chairperson or vice-chairperson of the
28 commission as prescribed by law.

29 S 11. This act shall take effect on the one hundred twentieth day
30 after it shall have become a law; provided that sections nine and ten of
31 this act shall take effect immediately; provided further that the tempo-
32 rary state commission established pursuant to section nine of this act
33 shall expire and be terminated on the first day next succeeding the date
34 of the submission of its report as provided in subdivision seven of
35 section nine of this act and; provided further, however that the chair-
36 person of the temporary commission on eminent domain reform shall notify
37 the legislative bill drafting commission upon the submission of its
38 report as provided for in subdivision seven of section nine of this act
39 in order that the commission may maintain an accurate and timely effec-
40 tive data base of the official text of the laws of the state of New York
41 in furtherance of effecting the provisions of section 44 of the legisla-
42 tive law and section 70-b of the public officers law.