

2862

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:

1     Section 1. Section 104 of the eminent domain procedure law is amended  
2     to read as follows:  
3     S 104. Applicability. The eminent domain procedure law shall be  
4     uniformly applied to any and all acquisitions by eminent domain of real  
5     property within the state of New York. EMINENT DOMAIN SHALL ONLY BE  
6     USED FOR PUBLIC PROJECTS INCLUDING FOR THE PURPOSE OF ESTABLISHING,  
7     LAYING OUT, EXTENDING AND WIDENING STREETS, AVENUES, BOULEVARDS, ALLEYS,  
8     AND OTHER PUBLIC HIGHWAYS AND ROADS; FOR PUMPING STATIONS, WATERWORKS,  
9     RESERVOIRS, WELLS, JAILS, POLICE AND FIRE STATIONS, CITY HALLS, OFFICE  
10    AND OTHER PUBLIC BUILDINGS INCLUDING SCHOOLS, CEMETERIES, PARKS, PLAY-  
11    GROUNDS AND PUBLIC SQUARES, PUBLIC OFF-STREET PARKING FACILITIES AND  
12    ACCOMMODATIONS, LAND FROM WHICH TO OBTAIN EARTH, GRAVEL, STONES, AND  
13    OTHER MATERIAL FOR THE CONSTRUCTION OF ROADS AND OTHER PUBLIC WORKS AND  
14    FOR RIGHT-OF-WAY FOR DRAINS, SEWERS, PIPE LINES, AQUEDUCTS, AND OTHER  
15    CONDUITS FOR DISTRIBUTING WATER TO THE PUBLIC; FOR FLOOD CONTROL; FOR  
16    HOUSING; FOR USE BY THE GOVERNMENT OF THE UNITED STATES; FOR RAILROADS,  
17    CANALS AND NAVIGABLE WATERWAYS, AIRPORTS AND OTHER PUBLIC TRANSPORTATION  
18    FACILITIES AND SERVICES; FOR WATER POWER, PUBLIC UTILITIES OR OTHER  
19    PRODUCTION AND TRANSMISSION OF HEAT, LIGHT OR POWER; FOR RECREATION,  
20    CONSERVATION, OPEN SPACE AND HISTORIC, ENVIRONMENTAL AND CULTURAL  
21    RESOURCE PROTECTION, AND SOLID WASTE MANAGEMENT; FOR RIVER REGULATION OR  
22    MANAGEMENT; FOR PUBLIC HOSPITALS AND HEALTH CARE FACILITIES; FOR RECLA-  
23    MATION OF SWAMP LANDS AND TO TAKE SUCH EXCESS OVER THAT NEEDED FOR SUCH  
24    PUBLIC USE OR PUBLIC IMPROVEMENT IN CASES WHERE SMALL REMNANTS WOULD  
25    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.

LBD03766-01-1

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

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

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

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

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

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

30 (2) any penalty incurred by the condemnee for prepayment of any preex-  
31 isting recorded mortgage entered into in good faith, encumbering such  
32 property; [and]

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

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

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