

4683

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 Transportation

AN ACT to amend the transportation law, in relation to enacting the "eminent domain ombudsman act"

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 referred to
2 as the "eminent domain ombudsman act".
3 S 2. The transportation law is amended by adding a new section 23 to
4 read as follows:
5 S 23. EMINENT DOMAIN OMBUDSMAN; POWERS; ARBITRATION PROCEDURES. 1. AS
6 USED IN THIS SECTION:
7 (A) "CONDEMNATION" OR "TAKING" MEANS A GOVERNMENTAL ACTION THAT
8 RESULTS IN A TAKING OF PRIVATE PROPERTY SO THAT COMPENSATION TO THE
9 OWNER OF THE PROPERTY IS REQUIRED BY:
10 (I) THE FIFTH OR FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE
11 UNITED STATES; OR
12 (II) THE STATE CONSTITUTION UNDER ARTICLE I, SECTION 7 OR ANY OTHER
13 LEGAL PROVISION HAVING TO DO WITH EMINENT DOMAIN.
14 (B) "TAKINGS LAW" MEANS THE PROVISIONS OF THE FEDERAL AND STATE
15 CONSTITUTIONS, THE CASE LAW INTERPRETING THOSE PROVISIONS, AND ANY RELE-
16 VANT STATUTORY PROVISIONS THAT REQUIRE A GOVERNMENTAL UNIT TO COMPENSATE
17 A PRIVATE PROPERTY OWNER FOR A TAKING.
18 2. (A) THERE IS CREATED AN EMINENT DOMAIN OMBUDSMAN IN THE DEPARTMENT.
19 (B) THE COMMISSIONER SHALL APPOINT A PERSON WITH BACKGROUND OR EXPER-
20 TISE IN TAKINGS LAW TO THE POSITION.
21 (C) THE POSITION IS AN EXEMPT POSITION.
22 (D) THE COMMISSIONER MAY EMPLOY CLERKS, INTERNS, OR OTHER PERSONNEL TO
23 ASSIST THE EMINENT DOMAIN OMBUDSMAN.
24 3. THE EMINENT DOMAIN OMBUDSMAN SHALL:

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

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1 (A) DEVELOP AND MAINTAIN EXPERTISE IN AND UNDERSTANDING OF TAKINGS
2 LAW;
3 (B) ASSIST STATE AGENCIES AND LOCAL GOVERNMENTS IN DEVELOPING THE
4 GUIDELINES;
5 (C) AT THE REQUEST OF A STATE AGENCY OR LOCAL GOVERNMENT, ASSIST THE
6 STATE AGENCY OR LOCAL GOVERNMENT IN ANALYZING ACTIONS WITH POTENTIAL
7 EMINENT DOMAIN IMPLICATIONS;
8 (D) ADVISE PRIVATE PROPERTY OWNERS WHO HAVE A LEGITIMATE POTENTIAL OR
9 ACTUAL EMINENT DOMAIN CLAIM AGAINST A STATE OR LOCAL GOVERNMENT ENTITY;
10 (E) IDENTIFY STATE OR LOCAL GOVERNMENT ACTIONS THAT HAVE POTENTIAL
11 EMINENT DOMAIN IMPLICATIONS AND, IF APPROPRIATE, ADVISE THOSE STATE OR
12 LOCAL GOVERNMENT ENTITIES ABOUT THOSE IMPLICATIONS;
13 (F) PROVIDE INFORMATION TO PRIVATE CITIZENS, CIVIC GROUPS, GOVERNMENT
14 ENTITIES, AND OTHER INTERESTED PARTIES ABOUT TAKINGS LAW AND THEIR
15 RIGHTS AND RESPONSIBILITIES UNDER IT;
16 (G) IF APPROPRIATE AND REQUESTED TO DO SO BY THE PRIVATE PROPERTY
17 OWNER, MEDIATE OR CONDUCT OR ARRANGE ARBITRATION FOR DISPUTES BETWEEN
18 PRIVATE PROPERTY OWNERS AND GOVERNMENT ENTITIES THAT INVOLVE:
19 (I) TAKINGS LAW ISSUES;
20 (II) ACTIONS FOR EMINENT DOMAIN UNDER THE EMINENT DOMAIN PROCEDURE LAW
21 OR ANY OTHER SECTION OF LAW HAVING TO DO WITH EMINENT DOMAIN; OR
22 (III) DISPUTES ABOUT RELOCATION ASSISTANCE UNDER ARTICLE FIVE OF THE
23 EMINENT DOMAIN PROCEDURE LAW; AND
24 (H) IF ARBITRATION OR MEDIATION IS REQUESTED BY THE PRIVATE PROPERTY
25 OWNER UNDER THIS SECTION, AND ARRANGED BY THE EMINENT DOMAIN OMBUDSMAN,
26 THE GOVERNMENT ENTITY OR CONDEMNING ENTITY SHALL PARTICIPATE IN THE
27 MEDIATION OR ARBITRATION AS IF THE MATTER WERE ORDERED TO MEDIATION OR
28 ARBITRATION BY A COURT.
29 4. (A) THE EMINENT DOMAIN OMBUDSMAN MAY ASSIST A PRIVATE PROPERTY
30 OWNER WITH RESPECT TO A DISPUTE INVOLVING THE EFFECT OF LOCAL GOVERNMENT
31 REGULATION ON THE USE AND OCCUPANCY OF REAL PROPERTY;
32 (B) IN ASSISTING A PRIVATE PROPERTY OWNER WITH A DISPUTE UNDER PARA-
33 GRAPH (A) OF SUBDIVISION FIVE OF THIS SECTION, THE EMINENT DOMAIN
34 OMBUDSMAN MAY NOT REQUIRE MEDIATION OR ARBITRATION OF A DISPUTE EXCEPT
35 AS PROVIDED IN PARAGRAPH (G) OF SUBDIVISION THREE OF THIS SECTION.
36 5. (A) (I) IN CONDUCTING OR ARRANGING FOR ARBITRATION, THE EMINENT
37 DOMAIN OMBUDSMAN SHALL FOLLOW THE PROCEDURES AND REQUIREMENTS OF ARTICLE
38 SEVENTY-FIVE OF THE CIVIL PRACTICE LAW AND RULES.
39 (II) IN APPLYING ARTICLE SEVENTY-FIVE OF THE CIVIL PRACTICE LAW AND
40 RULES, THE ARBITRATOR AND PARTIES SHALL TREAT THE MATTER AS IF:
41 (A) IT WERE ORDERED TO ARBITRATION BY A COURT; AND
42 (B) THE EMINENT DOMAIN OMBUDSMAN OR OTHER ARBITRATOR CHOSEN AS
43 PROVIDED FOR IN THIS SUBDIVISION WAS APPOINTED AS ARBITRATOR BY THE
44 COURT.
45 (III) FOR THE PURPOSE OF ARBITRATIONS CONDUCTED UNDER THIS SUBDIVI-
46 SION, IF THE DISPUTE TO BE ARBITRATED IS NOT ALREADY THE SUBJECT OF
47 LEGAL ACTION, THE COURT OF APPROPRIATE JURISDICTION SHALL ACT AS THE
48 COURT.
49 (IV) THE AWARD FROM AN ARBITRATION CONDUCTED UNDER THIS CHAPTER MAY
50 NOT BE VACATED UNDER THE PROVISIONS OF ARTICLE SEVENTY-FIVE OF THE CIVIL
51 PRACTICE LAW AND RULES BECAUSE OF THE LACK OF AN ARBITRATION AGREEMENT
52 BETWEEN THE PARTIES.
53 (B) THE EMINENT DOMAIN OMBUDSMAN SHALL ISSUE A WRITTEN STATEMENT
54 DECLINING TO ARBITRATE OR TO APPOINT AN ARBITRATOR WHEN, IN THE OPINION
55 OF THE EMINENT DOMAIN OMBUDSMAN:
56 (I) THE ISSUES ARE NOT RIPE FOR REVIEW;

1 (II) ASSUMING THE ALLEGED FACTS ARE TRUE, NO CAUSE OF ACTION EXISTS
2 UNDER UNITED STATES OR STATE LAW;

3 (III) ALL ISSUES RAISED ARE BEYOND THE SCOPE OF THE EMINENT DOMAIN
4 OMBUDSMAN'S STATUTORY DUTY TO REVIEW; OR

5 (IV) THE ARBITRATION IS OTHERWISE NOT APPROPRIATE.

6 (C)(I) THE EMINENT DOMAIN OMBUDSMAN SHALL APPOINT ANOTHER PERSON TO
7 ARBITRATE A DISPUTE WHEN:

8 (A) EITHER PARTY OBJECTS TO THE EMINENT DOMAIN OMBUDSMAN'S SERVING AS
9 THE ARBITRATOR AND AGREES TO PAY FOR THE SERVICES OF ANOTHER ARBITRATOR;

10 (B) THE EMINENT DOMAIN OMBUDSMAN DECLINES TO ARBITRATE THE DISPUTE FOR
11 A REASON OTHER THAN THOSE STATED IN PARAGRAPH (B) OF THIS SUBDIVISION
12 AND ONE OR BOTH PARTIES ARE WILLING TO PAY FOR THE SERVICES OF ANOTHER
13 ARBITRATOR; OR

14 (C) THE EMINENT DOMAIN OMBUDSMAN DETERMINES THAT IT IS APPROPRIATE TO
15 APPOINT ANOTHER PERSON TO ARBITRATE THE DISPUTE WITH NO CHARGE TO THE
16 PARTIES FOR THE SERVICES OF THE APPOINTED ARBITRATOR.

17 (II) IN APPOINTING ANOTHER PERSON TO ARBITRATE A DISPUTE, THE EMINENT
18 DOMAIN OMBUDSMAN SHALL APPOINT AN ARBITRATOR WHO IS:

19 (A) AGREEABLE TO BOTH PARTIES; OR

20 (B) AGREEABLE TO THE PARTY PAYING FOR THE ARBITRATOR AND THE EMINENT
21 DOMAIN OMBUDSMAN.

22 (III) THE EMINENT DOMAIN OMBUDSMAN MAY, ON THE INITIATIVE OF THE
23 EMINENT DOMAIN OMBUDSMAN OR UPON AGREEMENT OF BOTH PARTIES, APPOINT A
24 PANEL OF ARBITRATORS TO CONDUCT THE ARBITRATION.

25 (IV) THE DEPARTMENT MAY PROVIDE AN ARBITRATOR PER DIEM AND REIMBURSE
26 EXPENSES INCURRED IN THE PERFORMANCE OF THE ARBITRATOR'S DUTIES AT THE
27 RATES ESTABLISHED THEREFOR.

28 (D) IN ARBITRATING A DISPUTE, THE ARBITRATOR SHALL APPLY THE RELEVANT
29 STATUTES, CASE LAW, REGULATIONS, AND RULES OF THE STATE AND THE UNITED
30 STATES IN CONDUCTING THE ARBITRATION AND IN DETERMINING THE AWARD, IF
31 ANY.

32 (E) ARBITRATION BY OR THROUGH THE EMINENT DOMAIN OMBUDSMAN IS NOT
33 NECESSARY BEFORE BRINGING LEGAL ACTION TO ADJUDICATE ANY CLAIM.

34 (F) THE LACK OF ARBITRATION BY OR THROUGH THE EMINENT DOMAIN OMBUDSMAN
35 DOES NOT CONSTITUTE, AND MAY NOT BE INTERPRETED AS CONSTITUTING, A FAIL-
36 URE TO EXHAUST AVAILABLE ADMINISTRATIVE REMEDIES OR AS A BAR TO BRINGING
37 LEGAL ACTION.

38 6. THE FILING WITH THE EMINENT DOMAIN OMBUDSMAN OF A REQUEST FOR MEDI-
39 ATION OR ARBITRATION OF A CONSTITUTIONAL TAKING ISSUE DOES NOT STAY ANY
40 MATTER UNDER THE EMINENT DOMAIN PROCEDURE LAW.

41 7. THE EMINENT DOMAIN OMBUDSMAN MAY NOT BE COMPELLED TO TESTIFY IN A
42 CIVIL ACTION FILED WITH REGARD TO THE SUBJECT MATTER OF ANY REVIEW OR
43 ARBITRATION BY THE OMBUDSMAN.

44 8. THE EMINENT DOMAIN OMBUDSMAN MAY NOT REPRESENT PRIVATE PROPERTY
45 OWNERS, STATE AGENCIES, OR LOCAL GOVERNMENTS IN JUDICIAL PROCEEDINGS
46 UNDER THE EMINENT DOMAIN PROCEDURE LAW.

47 S 3. This act shall take effect on the one hundred twentieth day after
48 it shall have become a law.