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2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. BRONSON -- read once and referred to the Committee on Judiciary

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 ASSEMBLY, 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

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

LBD05480-01-3

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

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

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

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

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

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

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

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

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

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

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

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

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

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