

STATE OF NEW YORK

7661

2017-2018 Regular Sessions

IN ASSEMBLY

May 8, 2017

Introduced by M. of A. FITZPATRICK, MONTESANO -- Multi-Sponsored by --
M. of A. BARCLAY, BUTLER, CROUCH, FINCH, GIGLIO, HAWLEY, KOLB, McDO-
NOUGH, OAKS -- 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; creating the "home and property protection act" providing for the creation of a temporary state commission to examine eminent domain laws and make recommendations for further reforms; making an appropriation therefor; and providing for the expiration of certain provisions

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 cited as
2 the "home and property protection act".

3 § 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
18 which a tenant-stockholder of such corporation resides, and which is
19 represented by his or her share or shares of stock in such corporation

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

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1 as determined by its or their proportional relationship to the total
2 outstanding stock of the corporation, including that owned by the corpo-
3 ration, shall be deemed to be vested in such tenant-stockholder notwith-
4 standing the number of dwelling units in such residential premises, thus
5 qualifying a cooperative apartment as a home.

6 (J) "Blighted area" means an area in which one or both of the follow-
7 ing conditions exist: (i) a predominance of buildings and structures
8 which are deteriorated or unfit or unsafe for use or occupancy; or (ii)
9 a predominance of economically unproductive lands, buildings or struc-
10 tures, the redevelopment of which is needed to prevent further deteri-
11 oration which would jeopardize the economic well-being of the people.

12 § 3. Subdivision (B) of section 204 of the eminent domain procedure
13 law is amended to read as follows:

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

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

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

20 (3) the general effect of the proposed project on the environment and
21 residents of the locality;

22 (4) a declaration to such effect if the primary public purpose is
23 determined to be for economic development where one or more condemnees'
24 homes or dwellings are to be affected; and

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

26 § 4. The eminent domain procedure law is amended by adding a new
27 section 204-a to read as follows:

28 § 204-a. Economic development condemnation findings and homeowner
29 protection. (A) If the condemnor determines pursuant to paragraph four
30 of subdivision (B) of section two hundred four of this article that the
31 primary public purpose or benefit is for economic development, the
32 condemnor, in cooperation with the government of the locality in which
33 the real property to be acquired is located shall prepare a comprehen-
34 sive economic development plan for the affected area. The comprehensive
35 economic development plan shall include, but not be limited to, the
36 actual or expected benefits of the project, including the expected
37 increased tax revenue or expected creation of jobs, the types of busi-
38 nesses or industry that will use the condemned property, and alterna-
39 tives to the plan. When a draft comprehensive economic development plan
40 is created, the condemnor, in cooperation with the government of the
41 locality in which the real property to be acquired is located shall hold
42 at least one public hearing to compile and analyze public input. The
43 public hearing shall be held in accordance with the provisions of this
44 article at a location reasonably proximate to the real property which
45 may be acquired for such project. Thereafter, the condemnor shall
46 complete a final comprehensive economic development plan to be submitted
47 to the local legislative body, subject to any applicable right to over-
48 ride for its approval. To move forward with the project, the local
49 legislative body must approve the plan by a majority vote, and it must
50 also be approved by the chief executive officer of such locality if the
51 office of such chief executive officer is elective.

52 Notwithstanding any section of law to the contrary, the provisions of
53 subdivision (A) of this section shall not apply to a public project
54 where the primary public purpose or benefit is for economic development
55 if the area is a "blighted area" as defined under subdivision (J) of
56 section one hundred three of this chapter.

(B) The condemnor shall also create a homeowner impact assessment statement. The condemnor, in the homeowner impact assessment statement, shall assess the actual harm to affected condemnees that would lose their homes or dwellings and compare such harm with the reasonably expected community benefits, including but not limited to how the condemnor justifies the taking of the condemnees' homes or dwellings. The homeowner impact assessment statement shall be completed simultaneously with the comprehensive economic development plan under subdivision (A) of this section. The homeowner impact assessment statement shall be made widely available.

(C) In cases where a condemnee's home or dwelling is acquired for an economic development project, the condemnor shall, in addition to other compensation requirements under this article, compensate the condemnee a minimum of one hundred fifty percent of the fair market value of the real property. Residents who are displaced by the economic development project shall also be compensated at least one hundred fifty percent of the annual rent of such dwelling.

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

(A) Any person or persons jointly or severally, aggrieved by the condemnor's determination and findings made pursuant to section two hundred four of this article, may seek judicial review thereof by the appellate division of the supreme court, in the judicial department embracing the county wherein the proposed facility is located by the filing of a petition in such court within ~~thirty~~ ninety days after the condemnor's completion of its publication of its determination and findings pursuant to section two hundred four ~~herein~~ of this article. Such petition shall be accompanied by proof of service of a demand on the condemnor to file with said court a copy of a written transcript of the record of the proceeding before it, and a copy of its determination and findings. Upon receipt of such petition and demand, the condemnor shall forthwith deliver to the court a copy of the record and a copy of its determination and findings. The proceeding shall be heard on the record without requirement of reproduction. If such proposed public improvement is located in more than one judicial department such proceeding may be brought in any one, but only one of such departments and all such proceedings with relation to any single public project shall be consolidated with that first filed. If the condemnor substantially alters the scope of the project or the determination and findings, then the condemnee shall have an additional ninety days from the condemnor's publication of such alteration, which publication is hereby required, to seek judicial review under this section.

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

(j) The local legislative body of each city, town, or village in which any part of the real property to be acquired is located shall have the authority to approve or disapprove any corporation's use of eminent domain. Each such local legislative body shall approve or disapprove any proposed corporate use of the power of eminent domain by majority vote. Where applicable in the enactment of local laws, the chief executive officer of such locality if the office of such chief executive officer is elective shall approve or disapprove such governing body's decision, subject to any applicable right to override.

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

1 § 858-c. Municipal input. The governing body of each city, town, or
2 village for whose benefit, in whole or in part, an agency is established
3 shall have the authority to approve or disapprove any agency use of
4 eminent domain. Each such governing body shall approve or disapprove the
5 use of eminent domain by majority vote. Where applicable in the enact-
6 ment of local laws, the chief executive officer of such locality if the
7 office of such chief executive officer is elective shall approve or
8 disapprove such governing body's decision, subject to any applicable
9 right to override.

10 § 8. The public authorities law is amended by adding a new section
11 1831-b to read as follows:

12 § 1831-b. Exercise of power of eminent domain; limitations. The local
13 legislative body of each city, town, or village in which the authority
14 seeks to exercise the power of eminent domain shall have the authority
15 to approve or disapprove any exercise of such power by the authority.
16 Every such local legislative body shall approve or disapprove any exer-
17 cise of such power by majority vote. Where applicable in the enactment
18 of local laws, the chief executive officer of such locality if the
19 office of such chief executive officer is elective shall approve or
20 disapprove such local legislative body's decision, subject to any appli-
21 cable right to override.

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

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

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

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

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

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

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

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

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

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

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

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