STATE OF NEW YORK

5673

2021-2022 Regular Sessions

IN ASSEMBLY

February 22, 2021

Introduced by M. of A. FITZPATRICK, BYRNES, DiPIETRO, J. M. GIGLIO, MIKULIN, SALKA, TAGUE -- Multi-Sponsored by -- M. of A. BARCLAY, HAWLEY, MANKTELOW, McDONOUGH -- 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 repeal of certain provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "home and property protection act".

§ 2. Section 103 of the eminent domain procedure law is amended by adding three new subdivisions (H), (I) and (J) to read as follows:

(H) "Economic development project" means any project for which acquisition of real property may be required for a public use, benefit, or purpose where such public use, benefit, or purpose is primarily for economic development and where the condemnee's real property is a home or dwelling.

(I) For the purposes of article two of this chapter:

(1) "Home" means owner-occupied residential premises consisting of not more than six dwelling units.

(2) "Dwelling" means residential premises consisting of not more than thirty dwelling units, none of which is occupied by an owner of such premises.

(3) In the case of cooperative apartment corporations, title to that portion of real property owned by a cooperative apartment corporation in which a tenant-stockholder of such corporation resides, and which is

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

LBD08132-01-1

represented by his or her share or shares of stock in such corporation as determined by its or their proportional relationship to the total outstanding stock of the corporation, including that owned by the corporation, shall be deemed to be vested in such tenant-stockholder notwithstanding the number of dwelling units in such residential premises, thus qualifying a cooperative apartment as a home.

(J) "Blighted area" means an area in which one or both of the following conditions exist: (i) a predominance of buildings and structures which are deteriorated or unfit or unsafe for use or occupancy; or (ii) a predominance of economically unproductive lands, buildings or structures, the redevelopment of which is needed to prevent further deterioration which would jeopardize the economic well-being of the people.

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

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

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

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

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

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

(5) such other factors as it considers relevant.

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

§ 204-a. Economic development condemnation findings and homeowner protection. (A) If the condemnor determines pursuant to paragraph four of subdivision (B) of section two hundred four of this article that the primary public purpose or benefit is for economic development, the condemnor, in cooperation with the government of the locality in which the real property to be acquired is located shall prepare a comprehensive economic development plan for the affected area. The comprehensive economic development plan shall include, but not be limited to, the actual or expected benefits of the project, including the expected increased tax revenue or expected creation of jobs, the types of businesses or industry that will use the condemned property, and alternatives to the plan. When a draft comprehensive economic development plan is created, the condemnor, in cooperation with the government of the locality in which the real property to be acquired is located shall hold at least one public hearing to compile and analyze public input. The public hearing shall be held in accordance with the provisions of this article at a location reasonably proximate to the real property which may be acquired for such project. Thereafter, the condemnor shall complete a final comprehensive economic development plan to be submitted to the local legislative body, subject to any applicable right to override for its approval. To move forward with the project, the local legislative body must approve the plan by a majority vote, and it must also be approved by the chief executive officer of such locality if the office of such chief executive officer is elective.

Notwithstanding any section of law to the contrary, the provisions of subdivision (A) of this section shall not apply to a public project where the primary public purpose or benefit is for economic development

if the area is a "blighted area" as defined under subdivision (J) of 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:

§ 858-c. Municipal input. The governing body of each city, town, or village for whose benefit, in whole or in part, an agency is established shall have the authority to approve or disapprove any agency use of eminent domain. Each such governing body shall approve or disapprove the use 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.

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

§ 1831-b. Exercise of power of eminent domain; limitations. The local legislative body of each city, town, or village in which the authority seeks to exercise the power of eminent domain shall have the authority to approve or disapprove any exercise of such power by the authority. Every such local legislative body shall approve or disapprove any exercise of such power 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 local legislative body's decision, subject to any applicable right to override.

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

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

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

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

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

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

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

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

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

6. The commission may meet within and without the state, shall hold public hearings, and shall have all the powers of a legislative committee pursuant to the legislative law.

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

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

§ 11. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided that sections nine and ten of this act shall take effect immediately; provided further that section nine of this act shall expire and be deemed repealed on the first day next succeeding the date of the submission of the report as provided in subdivision seven of such section; and provided further, however that the chairperson of the temporary commission on eminent domain reform shall notify the legislative bill drafting commission upon the submission of its report as provided for in subdivision seven of section nine of this act in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effecting the provisions of section 44 of the legislative law and section 70-b of the public officers law.