

BILL TEXT:

STATE OF NEW YORK

3541

2005-2006 Regular Sessions

IN ASSEMBLY

February 3, 2005

Introduced by M. of A. GIANARIS, NOLAN -- Multi-Sponsored by -- M. of A. LENTOL -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to undertakings in actions relating to electric generating facilities

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

1 Section 1. The civil practice law and rules is amended by adding a new
2 section 2514 to read as follows:

3 § 2514. Undertaking in actions relating to certain electric generating
4 facilities. Any provision of law authorizing or requiring an undertaking
5 to be given by a party shall be construed as excluding actions relating
6 to the siting, construction or development of electric generating facil-
7 ities.

8 § 2. Subdivision (b) of rule 6312 of the civil practice law and rules,
9 as amended by chapter 24 of the laws of 1996, is amended to read as
10 follows:

11 (b) Undertaking. Except as provided in [~~section~~] sections 2512 and
12 2514, prior to the granting of a preliminary injunction, the plaintiff
13 shall give an undertaking in an amount to be fixed by the court, that
14 the plaintiff, if it is finally determined that he or she was not enti-
15 tled to an injunction, will pay to the defendant all damages and costs
16 which may be sustained by reason of the injunction, including:

17 1. if the injunction is to stay proceedings in another action, on any
18 ground other than that a report, verdict or decision was obtained by
19 actual fraud, all damages and costs which may be, or which have been,
20 awarded in the other action to the defendant as well as all damages and
21 costs which may be awarded him or her in the action in which the injunc-
22 tion was granted; or,

23 2. if the injunction is to stay proceedings in an action to recover
24 real property, or for dower, on any ground other than that a verdict,
25 report or decision was obtained by actual fraud, all damages and costs

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

LBD02422-01-5

A. 3541

2

1 which may be, or which have been, awarded to the defendant in the action
2 in which the injunction was granted, including the reasonable rents and
3 profits of, and any wastes committed upon, the real property which is
4 sought to be recovered or which is the subject of the action for dower,
5 after the granting of the injunction; or,
6 3. if the injunction is to stay proceedings upon a judgment for a sum
7 of money on any ground other than that the judgment was obtained by
8 actual fraud, the full amount of the judgment as well as all damages and
9 costs which may be awarded to the defendant in the action in which the
10 injunction was granted.
11 § 3. This act shall take effect immediately.

SPONSORS MEMO:

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(e)**

BILL NUMBER: A3541

SPONSOR: Gianaris (MS)

TITLE OF BILL: An act to amend the civil practice law and rules, in relation to undertakings in actions relating to electric generating facilities

PURPOSE OR GENERAL IDEA OF BILL: To relieve litigants who are challenging the siting and/or construction of certain power plants of the requirement to post a bond in order to obtain a preliminary injunction.

SUMMARY OF SPECIFIC PROVISIONS: Section 1 amends the Civil Practice Law & Rules (CPLR) by adding a new section 2514. This new section will exempt certain plaintiffs from the requirement that they post a bond in order to obtain a preliminary injunction. Specifically, plaintiffs who bring an action opposing the siting, construction and/or development of an electric generating facility that does NOT fall within the review and approval provisions of Article X of the Public Service Law will not be required to post a bond.

Section 2 makes a conforming amendment to CPLR Rule 6312.

EXISTING LAW: CPLR Rule 6312 requires a plaintiff seeking a preliminary injunction to submit an undertaking (post a bond) in an amount fixed by the court.

JUSTIFICATION: Concerned citizens, elected officials, and local businesses have joined together in a lawsuit to prevent construction of a power plant on Vernon Boulevard in Long Island City. The plaintiffs argue that in constructing the facility, the New York Power Authority (NYPA) has not complied with the letter and spirit of state law by holding a comprehensive site review (including consideration of alternative sites) and public hearings.

While the court granted these plaintiffs a preliminary injunction, current state laws (CPLR 6312) requires the plaintiffs post a bond in an

RETRIEVE BILL

amount fixed by the court. The Mayor of the City of New York has proposed a bond set at \$25 million. The plaintiffs, who include elected officials and their constituents, do not have the resources to post such a bond. The effect of the bond requirement may be to prevent this lawsuit from going through even though the court has found the petitioners are entitled to a preliminary injunction to preserve the status quo. This legislation is intended to prevent such an unjust result. It provides that where construction of an electric generating facility is proposed and an action is brought to prevent the siting, construction or development of such facility, the plaintiffs shall not be required to post a bond in order to obtain a preliminary injunction.

This proposal is narrowly tailored to address a specific problem - the construction of power plants outside the Article X siting process without any input from the public who will be most affected by such plants. It will ensure that construction of these plants is not completed before the court has an opportunity to rule on the merits of the case even though the plaintiffs are unable to post the bond otherwise required by the CPLR.

PRIOR LEGISLATIVE HISTORY: 2002 - A.7314

FISCAL IMPLICATIONS: None to the state.

EFFECTIVE DATE: This act shall take effect immediately.
