

1 HOUSE BILL 365

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO REAL PROPERTY; PROVIDING PROTECTION TO REAL  
12 PROPERTY OWNERS AGAINST EMINENT DOMAIN.

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. Section 42A-1-6 NMSA 1978 (being Laws 1980,  
16 Chapter 20, Section 6, as amended) is amended to read:

17 "42A-1-6. PRELIMINARY EFFORTS TO PURCHASE.--

18 A. Except as provided in Sections 42A-1-7 and  
19 42A-1-27 NMSA 1978, an action to condemn property may not be  
20 maintained over timely objection by the condemnee unless the  
21 condemnor made a good faith effort to acquire the property by  
22 purchase before commencing the action. A good-faith effort as  
23 required by this subsection shall include a good-faith, final  
24 and best offer, delivered in writing by the condemnor to the  
25 condemnee.

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1           B. An offer to purchase made in substantial  
2 compliance with Sections 42A-1-3 through 42A-1-4 NMSA 1978 is  
3 prima facie evidence of good faith [~~under~~] pursuant to  
4 Subsection A of this section.

5           C. An action to condemn property shall not be  
6 instituted until after all regulatory approvals necessary for  
7 the intended use of the property after condemnation, other than  
8 local building permits as applicable, have been obtained by the  
9 condemnor."

10           SECTION 2. Section 42A-1-24 NMSA 1978 (being Laws 1981,  
11 Chapter 125, Section 20, as amended by Laws 2001, Chapter 10,  
12 Section 1 and also by Laws 2001, Chapter 320, Section 1) is  
13 amended to read:

14           "42A-1-24. DETERMINATION OF COMPENSATION AND DAMAGES--  
15 INTEREST.--

16           A. For the purposes of assessing compensation and  
17 damages, the right thereto shall be deemed to have accrued as  
18 of the date the petition is filed, and actual value on that  
19 date shall be the measure of compensation for all property  
20 taken, and also the basis of damages for property not taken but  
21 injuriously affected in cases where such damages are legally  
22 recoverable; the amount of the award shall be determined from  
23 the evidence and not be limited to any amount alleged in the  
24 petition or set forth in the answer.

25           B. Whenever just compensation shall be ascertained

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1 and awarded in such proceeding and established by judgment, the  
2 judgment shall include as a part of the just compensation  
3 awarded interest at the rate of ten percent a year upon the  
4 unpaid portion of the compensation awarded from the date the  
5 petition is filed to the date of payment or the date when the  
6 proceedings are finally abandoned. The judgment shall not  
7 include interest upon the amount represented by funds deposited  
8 by the condemnor pursuant to the provisions of Sections  
9 42A-1-19 and 42A-1-22 NMSA 1978.

10 C. The court shall have the power to direct the  
11 payment of delinquent taxes, special assessments and rental or  
12 other charges owed out of the amount determined to be just  
13 compensation and to make orders as the court deems necessary  
14 with respect to encumbrances, liens, rents, insurance and other  
15 just and equitable charges.

16 D. The judgment shall credit against the total  
17 amount awarded to the condemnee any payments or deposits paid  
18 over to ~~[him]~~ the condemnee made before the date of entry of  
19 judgment by the condemnor as compensation for the property  
20 taken, including any funds ~~[which]~~ that the condemnee withdrew  
21 from the amount deposited by the condemnor pursuant to the  
22 provisions of Section 42A-1-19 or 42A-1-22 NMSA 1978.

23 E. If the amount to be credited against the award  
24 under Subsection D of this section exceeds the total amount  
25 awarded, the court shall require that the condemnee pay the

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1 excess to the condemnor.

2 F. The price paid for similar property by one other  
3 than the condemnor may be considered on the question of the  
4 value of the property condemned or damaged if there is a  
5 finding that there have been no material changes in conditions  
6 between the date of the prior sale and the date of taking, that  
7 the prior sale was made in a free and open market and that the  
8 property is sufficiently similar in the relevant market with  
9 respect to situation, usability, improvements and other  
10 characteristics.

11 G. If, prior to the date that a petition is filed  
12 pursuant to Section 42A-1-17 NMSA 1978, the threat of  
13 condemnation or the intended use of the property after  
14 condemnation has, in the professional judgment of the  
15 appraisers, depressed the value of the property, the value of  
16 the property shall be determined in a manner to reflect its  
17 market value in the absence of the threat of condemnation or  
18 the intended use of the property after condemnation."

19 SECTION 3. Section 42A-1-25 NMSA 1978 (being Laws 1981,  
20 Chapter 125, Section 21) is amended to read:

21 "42A-1-25. LITIGATION EXPENSES.--

22 A. The court shall award the condemnee [~~his~~] the  
23 condemnee's litigation expenses whenever:

24 (1) the condemnor has abandoned the  
25 condemnation proceeding;

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1 (2) the condemnation proceeding has been  
2 dismissed for any reason except when a bona fide settlement has  
3 been reached; [~~or~~]

4 (3) there is a final determination that the  
5 condemnor does not have a right to take the property sought to  
6 be acquired in the condemnation proceeding; or

7 (4) in the event the condemnor is a  
8 non-governmental entity, the final award is more than the  
9 good-faith, final and best offer delivered to the condemnee by  
10 the condemnor in compliance with Subsection A of Section  
11 42A-1-6 NMSA 1978.

12 B. Before awarding litigation expenses pursuant to  
13 this section, the court shall review the reasonableness of such  
14 expenses and fees.

15 C. In no event shall the court award the condemnor  
16 its litigation expenses."

17 SECTION 4. Section 42A-1-26 NMSA 1978 (being Laws 1981,  
18 Chapter 125, Section 22) is amended to read:

19 "42A-1-26. MEASURE OF DAMAGE TO REMAINDER IN PARTIAL  
20 CONDEMNATION.--

21 A. In any condemnation proceeding in which there is  
22 a partial taking of property, the measure of compensation and  
23 damages resulting from the taking shall be the difference  
24 between the fair market value of the entire property  
25 immediately before the taking and the fair market value of the

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1 property remaining immediately after the taking. In  
2 determining such difference, all elements [~~which~~] that would  
3 [~~enhance or~~] diminish the fair market value before and after  
4 the taking shall be considered, [~~even though some of the~~  
5 ~~damages sustained by the remaining property, in themselves,~~  
6 ~~might otherwise be deemed noncompensable. Further, in~~  
7 ~~determining such values or differences therein, elements which~~  
8 ~~would enhance or benefit any property not taken shall only be~~  
9 ~~considered for the purpose of offsetting any damages or~~  
10 ~~diminution of value to the property not taken] including any  
11 depression of the market value of the property as a result of  
12 the mere threat of condemnation or the intended use of the  
13 property after condemnation.~~

14 B. If the damages resulting from the taking, as  
15 determined pursuant to Subsection A of this section, equal or  
16 exceed fifty percent of the market value of the property, the  
17 condemnee, at the condemnee's discretion, may require the  
18 condemnor to acquire the entire tract affected, at its full  
19 market value, provided that, if the condemnee so requires, the  
20 condemnor may in lieu thereof abandon the condemnation  
21 proceeding."

22 SECTION 5. Section 42A-1-33 NMSA 1978 (being Laws 1981,  
23 Chapter 125, Section 28) is amended to read:

24 "42A-1-33. EASEMENT--ABANDONMENT.--Except as specifically  
25 provided by law, when an easement has been taken by eminent

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1 domain for public use and the public use is subsequently  
2 abandoned, or the intended public use has not been implemented  
3 within five years from the date at which the condemnor is  
4 authorized to take possession of the property, the easement is  
5 extinguished and the possession of the property reverts to the  
6 owner or [~~his~~] the owner's successor in interest of the fee  
7 free from any rights in the condemnor."

8 SECTION 6. EFFECTIVE DATE.--The effective date of the  
9 provisions of this act is July 1, 2015.

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