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SENATE BILL 109

**44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999**

INTRODUCED BY

Patrick H. Lyons

AN ACT

RELATING TO CONDEMNATION PROCEEDINGS; PROVIDING SAFEGUARDS FOR  
PERSONS WHOSE PROPERTY IS SUBJECT TO CONDEMNATION PROCEEDINGS;  
AMENDING SECTIONS OF THE EMINENT DOMAIN CODE.

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

Section 1. Section 42A-1-4 NMSA 1978 (being Laws 1980,  
Chapter 20, Section 4) is amended to read:

"42A-1-4. NEGOTIATION--OTHER APPRAISALS-- CONDEMNOR'S  
DUTIES. --

A. A condemnor shall make reasonable and diligent  
efforts to acquire property by negotiation.

B. Unless prohibited by federal law, if the  
condemnor or condemnee has had prepared appraisals for the  
property, he shall make such appraisals available to the other  
party during the negotiation period.

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1                   C. Prior to the negotiation period, a condemnor  
2 shall provide the condemnee with written guidelines, in  
3 Spanish if appropriate, that explain:

- 4                               (1) the condemnor's legal obligations;
- 5                               (2) the condemnee's legal rights; and
- 6                               (3) the condemnor's policies concerning the  
7 equitable performance of negotiations with condemnees.

8                   D. Prior to commencing a condemnation action or  
9 threatening to commence a condemnation action, a condemnor  
10 shall:

- 11                               (1) prepare an appraisal of the condemnee's  
12 property; and
- 13                               (2) provide the condemnee with copies of all  
14 contracts to purchase and offers to purchase properties that  
15 are similar to the condemnee's property. "

16                   Section 2. Section 42A-1-5 NMSA 1978 (being Laws 1980,  
17 Chapter 20, Section 5) is amended to read:

18                   "42A-1-5. APPRAISAL--OFFER. --

19                   A. If the parties are unable to negotiate a  
20 settlement, the condemnee may, within twenty-five days after  
21 written notice by the condemnor of its intent to file a  
22 condemnation action in district court, give written notice to  
23 the condemnor requesting an appraisal to determine the amount  
24 that would constitute just compensation for the taking of the  
25 condemnee's property and obtained from:

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1 (1) one appraiser appointed by the condemnor;

2 (2) one appraiser appointed by the condemnee;

3 and

4 (3) one appraiser jointly appointed by the  
5 appraisers for the condemnor and the condemnee.

6 B. The condemnee and condemnor shall appoint their  
7 respective appraisers within fifteen days after notice has  
8 been given by the condemnee to the condemnor pursuant to the  
9 provisions of Subsection A of this section, and the third  
10 appraiser shall be jointly appointed within fifteen days  
11 thereafter.

12 C. The appraisals shall be in writing and signed  
13 by the appraisers. The appraisers shall deliver copies to  
14 each party personally or by registered mail or certified mail,  
15 return receipt requested.

16 D. The fees and expenses of the appraisers shall  
17 be paid by the [appointing parties; provided, however, the  
18 condemnee and condemnor shall share equally in paying the fees  
19 and expenses of the jointly appointed appraiser] condemnor.

20 E. After receiving a copy of the appraisals  
21 provided for pursuant to this section, the condemnor may  
22 establish an amount which it believes to be just compensation  
23 and may submit to the condemnee an offer to acquire the  
24 property for the full amount so established. If the condemnor  
25 tenders an offer pursuant to this section, the amount offered

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1 for the property shall not be less than the amount of  
2 compensation shown by the final common appraisal of the three  
3 appraisers, or, if all three appraisers do not agree, the  
4 offer shall not be less than the appraisal prepared by the  
5 condemnor's appraiser. The condemnee must reject or accept  
6 the offer made by the condemnor pursuant to this section  
7 within fifteen days after the offer is tendered. "

8 Section 3. Section 42A-1-12 NMSA 1978 (being Laws 1980,  
9 Chapter 20, Section 12, as amended) is amended to read:

10 "42A-1-12. RECOVERY OF DAMAGES, COSTS AND EXPENSES. --

11 A. A condemnor is liable to the condemnee and, if  
12 applicable, to the person in actual physical occupancy of the  
13 property for trespass upon the property, for physical injury  
14 to [~~and~~] the property or for substantial interference with  
15 possession or use of the property caused by its entry and  
16 activities upon the property made pursuant to Section 42A-1-8  
17 NMSA 1978. This liability may be enforced in a civil action  
18 against the condemnor or by application to the court in the  
19 circumstances provided by Subsection C of this section.

20 B. In an action or other proceeding for recovery  
21 of damages under this section, the prevailing claimant shall  
22 be allowed his reasonable costs. In addition, the court shall  
23 award the claimant his litigation expenses incurred in any  
24 proceeding [~~under Section 42A-1-9 or 42A-1-11 NMSA 1978~~] if it  
25 finds liability pursuant to Subsection A of this section and

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1 that the condemnor:  
2 (1) entered the property unlawfully; or  
3 (2) failed without just cause to  
4 substantially comply with or wrongfully exceeded or abused the  
5 authority of an order made under Section 42A-1-9 or 42A-1-11  
6 NMSA 1978.

7 C. If funds are on deposit or a surety bond has  
8 been required under Section 42A-1-10 or 42A-1-11 NMSA 1978,  
9 the condemnee or other person claiming damages under  
10 Subsection A of this section may apply to the court for an  
11 award of the amount he is entitled to recover. The court  
12 shall determine the amount and award it to the person entitled  
13 thereto and direct that the payment be made out of the money  
14 on deposit or pursuant to the provisions of the bond. If the  
15 amount on deposit or the amount of the surety bond is  
16 insufficient to pay the full amount, the court shall enter  
17 judgment against the condemnor for the unpaid portion."

18 Section 4. Section 42A-1-25 NMSA 1978 (being Laws 1981,  
19 Chapter 125, Section 21) is amended to read:

20 "42A-1-25. LITIGATION EXPENSES. --

21 A. The court shall award the condemnee his  
22 litigation expenses whenever:

- 23 (1) the condemnor has abandoned the  
24 condemnation proceeding;  
25 (2) the condemnation proceeding has been

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1 dismissed for any reason except when a bona fide settlement  
2 has been reached; [~~or~~]

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

6 (4) the court finds that the condemnor is  
7 liable to the condemnee, as provided in Section 42A-1-12 NMSA  
8 1978.

9 B. Before awarding litigation expenses pursuant to  
10 this section, the court shall review the reasonableness of  
11 such expenses and fees. "

12 Section 5. Section 42A-1-29 NMSA 1978 (being Laws 1981,  
13 Chapter 125, Section 25, as amended) is amended to read:

14 "42A-1-29. PROPERTY TAKEN OR DAMAGED WITHOUT  
15 COMPENSATION OR CONDEMNATION PROCEEDINGS--RIGHT OF ACTION BY  
16 CONDEMNEE. --

17 A. A person authorized to exercise the right of  
18 eminent domain who has taken or damaged or who may take or  
19 damage any property for public use without making just  
20 compensation or without instituting and prosecuting to final  
21 judgment in a court of competent jurisdiction any proceeding  
22 for condemnation is liable to the condemnee, or any subsequent  
23 grantee thereof, for triple the value thereof or the damage  
24 thereto at the time the property is or was taken or damaged,  
25 with ten percent per year interest, to the date such just

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1 compensation is made, in an action to be brought under and  
2 governed by the Rules of Civil Procedure for the District  
3 Courts of this state. Actions under this section shall be  
4 brought in the county where the land or any portion thereof is  
5 located.

6 B. Notwithstanding the provisions of Subsection A  
7 of this section or any other provision of law regarding  
8 compensation for damage in the situation described in that  
9 subsection:

10 (1) if the person authorized had taken or  
11 been granted for public use, pursuant to a final judgment, an  
12 order of immediate possession or private agreement, any  
13 property;

14 (2) the property subsequently taken or  
15 damaged was contiguous to the property taken or granted; and

16 (3) the person takes or damages property  
17 contiguous to property previously taken or granted from the  
18 condemnee or grantor without making just compensation or  
19 without instituting and prosecuting to final judgment in a  
20 court of competent jurisdiction any proceeding for  
21 condemnation; the condemnee or grantor shall receive  
22 compensation for the land taken or damaged at the [ greater of  
23 fair market value or a unit rate of five times that of the  
24 compensation or consideration he received for the land taken;—  
25 provided that if the width of the property taken or damaged is—

1 ~~not equal to the width originally taken or damaged,~~  
2 ~~compensation required pursuant to this subsection shall be~~  
3 ~~increased or reduced ratably in accordance with the~~  
4 ~~relationship of the respective widths]~~ rate of three times  
5 fair market value.

6 C. Any amounts paid under Subsection B of this  
7 section shall be deemed just compensation."

8 Section 6. EFFECTIVE DATE. --The effective date of the  
9 provisions of this act is July 1, 1999.

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1 FORTY-FOURTH LEGISLATURE  
2 FIRST SESSION, 1999  
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6 February 4, 1999  
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8 Mr. President:  
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10 Your CONSERVATION COMMITTEE, to whom has been referred  
11

12 SENATE BILL 109  
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14 has had it under consideration and reports same WITHOUT  
15 RECOMMENDATION, and thence referred to the JUDICIARY  
16 COMMITTEE.  
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19 Respectfully submitted,  
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25 Fernando R. Macias, Chairman

FORTY-SECOND LEGISLATURE  
SECOND SESSION

KEYBOARD(TYPE SLUGS)

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 9 For 0 Against

Yes: 9

No: None

Excused: Eisenstadt

Absent: None

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