

#36

7/5/73

## Memorandum 73-58

Subject: Study 36 - Outline of Eminent Domain Law

We are at the point where we must firm up the organization of the Eminent Domain Law. We are hopeful that, after the July meeting, substantial additional portions of the Eminent Domain Law can be sent to the printer and that the remaining portions of the Eminent Domain Law can be sent to the State Bar Committee.

The staff has given considerable thought and discussion to the organization of the statute. Attached is an outline of the new Title 7--Eminent Domain Law. The material prepared for the July meeting follows this organization. (We have made a few changes in the organization of some of the material distributed in June as we worked on later portions of the statute. The attached outline, however, represents the latest version of each chapter.) We request that the organization be approved subject to any necessary changes to reflect Commission action on particular chapters.

The following is a report on the status of each chapter:

Chapter 1. General Provisions

Presented at July meeting for approval to send to printer. See Memorandum 73-49.

Chapter 2. Principles of Construction; Definitions

Presented at July meeting for approval to send to printer. See Memorandum 73-49.

Chapter 3. The Right to Take

This chapter, which formerly was Chapter 4, has been set in type. No changes are proposed at this time except that former Article 8 (preliminary location, survey, and tests) has been moved to new Chapter 4.

#### Chapter 4. Precondemnation Activities

Presented at July meeting for approval to send to printer. See Memorandum 73-49.

#### Chapter 5. Commencement of Proceedings

Presented at July meeting for approval to send to State Bar Committee for Comment. We hope to obtain approval for printing of this chapter at the September meeting. See Memorandum 73-56.

#### Chapter 6. Deposit and Withdrawal of Probable Compensation; Obtaining Possession Prior to Judgment

Presented at July meeting for approval to send to printer. See Memorandum 73-49.

#### Chapter 7. Discovery; Exchange of Valuation Data

The policy matters involved in drafting this chapter will be discussed at the July meeting. See Memorandum 73-61. The staff hopes to produce this chapter for consideration and approval for printing at the September meeting. (We already have the comments of the State Bar Committee on this subject. See Memorandum 73-61.)

#### Chapter 8. Procedures for Determining Right to Take and Compensation

Presented at July meeting for approval to send to State Bar Committee for Comment. We hope to obtain approval for printing of this chapter at the September meeting. See Memorandum 73-59.

#### Chapter 9. Compensation

Sent to State Bar Committee for comment. We hope to obtain approval for printing of this chapter at the September meeting.

#### Chapter 10. Divided Interests

Sent to State Bar Committee for comment. We hope to obtain approval for printing of this chapter at the September meeting.

#### Chapter 11. Postjudgment Proceedings

Presented at July meeting for approval to send to State Bar Committee for comment. We hope to obtain approval for printing of this chapter at the September meeting. See Memorandum 73-60.

#### Chapter 12. Arbitration

This chapter has been tentatively approved. We plan to send it to the State Bar Committee for comment after our July meeting. We hope to obtain approval for the printing of this chapter at the September meeting.

The staff recognizes that some additional reorganization will be necessary after the Commission has considered various chapters at the July meeting. We also may want to add a chapter on inverse condemnation. Nevertheless, we believe that the organization is basically sound and should be approved.

You can see that the schedule above anticipates that the entire Eminent Domain Law itself will be approved for printing at the September 1973 meeting. In addition to the Eminent Domain Law, we anticipate that hundreds of additions, amendments, and repeals of other statutes will be needed to conform them to the Eminent Domain Law and to continue the right to take authorizations that no longer will be contained in the Eminent Domain Law. Some of these have already been tentatively approved by the Commission. We are hopeful that all the additions, amendments, and repeals can be presented to the Commission and approved for printing at the October 1973 meeting. Finally, we will need to write the preliminary portion of the tentative recommendation, disposition tables, and other portions of the report. We are hopeful that we will have all the copy for the report in the hands of the printer before the end of the year. If we can accomplish this objective--and get the major portions of the report to the printer in September and October 1973--there is a fair chance we will have the printed report by July 1974. We can review comments on the printed tentative recommendation at our September and October 1974 meetings and approve the recommendation for printing and submission to the 1975 session at our October 1974 meeting. When we will get the printed report on the final recommendation we cannot predict with any certainty; it will depend largely on how many changes we make in the tentative recommendation.

In considering the schedule on this project, it is important to recognize that it takes a great deal of time from the time the report is approved to print until the printed report is delivered. We approved for printing our

tentative recommendation on prejudgment attachment in 1972 and only today (July 5) did we receive the page proofs.

If we are to be able to distribute a printed tentative recommendation on eminent domain for comment--and the staff believes that this is essential--the staff believes that it is essential that the material be approved for printing according to the suggested schedule. Otherwise, it will not be possible to submit the recommendation to the 1975 Legislature. This means that we cannot spend a lot of time picking at words and should devote our attention to policy questions. At the same time, we hope that the words used will be adequate so that we will not need to revise extensively our proposed legislation when we submit our final recommendation just to correct deficiencies in language.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

TITLE 7. EMINENT DOMAIN LAW

CHAPTER 1. GENERAL PROVISIONS

- 1230.010. Short title
- 1230.020. Law governing exercise of eminent domain power
- 1230.030. Exercise of eminent domain power discretionary
- 1230.040. Rules of practice in eminent domain proceedings
- 1230.050. Court may enforce right to possession
- 1230.060. Public Utilities Commission jurisdiction preserved
- 1230.070. Effect of enactment of title on prior proceedings

CHAPTER 2. PRINCIPLES OF CONSTRUCTION; DEFINITIONS

Article 1. Construction

- 1235.010. Construction of title
- 1235.020. Effect of headings
- 1235.030. References to statutes
- 1235.040. "Chapter," "article," "section," "subdivision,"  
and "paragraph"
- 1235.050. Construction of tenses
- 1235.060. "Shall" and "may"
- 1235.070. Constitutionality

Article 2. Words and Phrases Defined

- 1235.110. Application of definitions
- 1235.120. Final judgment
- 1235.130. Judgment
- 1235.140. Law
- 1235.150. Local public entity
- 1235.160. Person
- 1235.170. Property
- 1235.180. Property appropriated to public use
- 1235.190. Public entity
- 1235.200. State
- 1235.210. Statute

**CHAPTER 3. THE RIGHT TO TAKE**

**Article 1. General Limitations on Exercise of Power of Eminent Domain**

- 1240.010. Public use limitation
- 1240.020. Statutory delegation of condemnation authority  
required
- 1240.030. Public necessity required
- 1240.040. Resolution of necessity required
- 1240.050. Extraterritorial condemnation

**Article 2. Rights Included in Grant of Eminent Domain Authority**

- 1240.110. Right to acquire any necessary right or interest  
in any type of property
- 1240.120. Right to acquire property to make effective the  
principal use
- 1240.130. Acquisition by gift, purchase, lease, or other  
means
- 1240.140. Joint exercise of condemnation power pursuant  
to Joint Powers Agreements Act
- 1240.150. Acquisition of all or portion of remainder with  
owner's consent
- 1240.160. Interpretation of grants of eminent domain  
authority; separate authorizations

**Article 3. Future Use**

- 1240.210. "Date of use" defined
- 1240.220. Acquisitions for future use
- 1240.230. Burden of proof

**Article 4. Substitute Condemnation**

- 1240.310. Definitions
- 1240.320. Substitute condemnation where owner of necessary  
property authorized to condemn property
- 1240.330. Substitute condemnation to permit condemnor to  
relocate public use
- 1240.340. Substitute condemnation where owner of necessary  
property lacks power to condemn property
- 1240.350. Substitute condemnation to provide utility  
service or access to public road
- 1240.360. Special statutes not affected

**Article 5. Excess Condemnation**

- 1240.410. Condemnation of remnants
- 1240.420. Resolution of necessity and complaint
- 1240.430. Disposal of acquired remnants

**Article 6. Condemnation for Compatible Use**

- 1240.510. Property appropriated to public use may be taken for compatible public use
- 1240.520. Burden of proof
- 1240.530. Terms and conditions of joint use

**Article 7. Condemnation for More Necessary Public Use**

- 1240.610. Property appropriated to public use may be taken for more necessary public use
- 1240.620. Burden of proof
- 1240.630. Right of prior user to joint use
- 1240.640. Use by state more necessary than other uses
- 1240.650. Use by public entity more necessary than use by other persons
- 1240.660. Property appropriated to a public use by cities, counties, or certain special districts
- 1240.670. Property preserved in its natural condition by nonprofit organization
- 1240.680. Property appropriated to park or similar uses
- 1240.690. Declaratory relief where acquisition for state highway purposes
- 1240.700. Declaratory relief where regional park to be acquired for city or county street purposes

**CHAPTER 4. PRECONDEMNATION ACTIVITIES**

**Article 1. Preliminary Location, Survey, and Tests**

- 1245.010. Right to make examinations and tests
- 1245.020. Liability for damages
- 1245.030. Consent or court order required in certain cases
- 1245.040. Court order permitting entry; deposit of probable compensation
- 1245.050. Modification of court order
- 1245.060. Management of amount deposited
- 1245.070. Recovery of damages and expenses

**Article 2. Resolution of Necessity**

- 1245.210. "Governing body" defined
- 1245.220. Resolution of necessity required
- 1245.230. Contents of resolution
- 1245.240. Adoption of resolution
- 1245.250. Effect of resolution
- 1245.260. Failure to initiate eminent domain proceeding within  
six months from adoption of resolution

**CHAPTER 5. COMMENCEMENT OF PROCEEDING**

**Article 1. Jurisdiction and Venue**

- 1250.010. Jurisdiction in superior court
- 1250.020. Place of commencement
- 1250.030. Place of trial
- 1250.040. Change of place of trial generally

**Article 2. Commencement of Proceeding Generally**

- 1250.110. Complaint commences proceeding
- 1250.120. Contents of summons
- 1250.130. Additional requirements where service is by publication
- 1250.140. Persons served where state is a defendant
- 1250.150. Lis pendens

**Article 3. Parties; Joinder of Property**

- 1250.210. Identification of parties
- 1250.220. Naming defendants
- 1250.230. Appearance by unnamed defendants
- 1250.240. Joinder of property

**Article 4. Pleadings**

- 1250.310. Contents of complaint
- 1250.320. Contents of answer
- 1250.330. Verification of answer
- 1250.340. [Reserved for expansion]
- 1250.350. Pleading objections to right to take
- 1250.360. Grounds for objection to right to take where resolution  
conclusive
- 1250.370. Grounds for objection to right to take where resolution  
not conclusive
- 1250.380. Amending complaint to add or delete property

CHAPTER 6. DEPOSIT AND WITHDRAWAL OF PROBABLE COMPENSATION; POSSESSION  
PRIOR TO ENTRY OF JUDGMENT

Article 1. Deposit of Probable Compensation

- 1255.010. Deposit of amount of appraised value of property
- 1255.020. Service of notice of deposit
- 1255.030. Increase or decrease in amount of deposit
- 1255.040. Deposit for relocation purposes on motion of  
certain defendants
- 1255.050. Deposit on motion of owner of rental property
- 1255.060. Limitation on use of evidence submitted in connection  
with deposit
- 1255.070. Deposit in State Treasury unless otherwise required
- 1255.080. Effect on deposit of entry of judgment
- 1255.090. Deposit does not waive right of appeal

Article 2. Withdrawal of Deposit

- 1255.210. Application for withdrawal of deposit
- 1255.220. Order permitting withdrawal
- 1255.230. Objections to withdrawal
- 1255.240. Security where conflicting claims to amount withdrawn
- 1255.250. Security when amount in excess of original  
deposit is withdrawn
- 1255.260. Withdrawal waives all defenses except claim to  
greater compensation
- 1255.270. Limitation on use of evidence submitted in  
connection with deposit
- 1255.280. Repayment of amount of excess withdrawal

Article 3. Possession Prior to Judgment

- 1255.410. Order for possession prior to judgment
- 1255.420. Stay of order for hardship
- 1255.430. Stay of order where right to take contested
- 1255.440. Vacating order for possession
- 1255.450. Service of order
- 1255.460. Right of plaintiff to take possession after defendant's  
consent or withdrawal of deposit
- 1255.470. Taking possession does not waive right of appeal
- 1255.480. Police power not affected

**CHAPTER 7. DISCOVERY; EXCHANGE OF VALUATION DATA**

**Article 1. Discovery**

1258.010

**Article 2. Exchange of Valuation Data**

1258.210. Exchange of lists of expert witnesses and  
statements of valuation data

1258.220. Statement of valuation data; persons from whom  
exchanged; contents

1258.230. List of expert witnesses; contents

1258.240. Notice to persons upon whom list and statements  
served of additional witnesses or data; form

1258.250. Limitations upon calling witnesses and testimony  
by witnesses

1258.260. Grounds for court authority to call witness or  
permit testimony by witness

1258.270. Applicability of article

1258.280. Use of discovery procedures

1258.290. Admissibility of evidence

**CHAPTER 8. PROCEDURES FOR DETERMINING RIGHT TO TAKE AND COMPENSATION**

**Article 1. General Provisions**

1260.010. Trial preference

1260.020. Consolidation of separate proceedings

**Article 2. Contesting Right to Take**

1260.110. Priority for hearing

1260.120. Disposition of defendant's objections to right  
to take

**Article 3. Procedures Relating to Determination of Compensation**

1260.210. Order of proof and argument; burden of proof

1260.220. Procedure where divided interests

1260.230. Court determination of compensation for deceased and  
unknown persons

1260.240. Compensation or fee for appraisers, referees, commis-  
sioners, and other such persons

CHAPTER 9. COMPENSATION

Article 1. General Provisions

- 1263.010. Right to compensation
- 1263.020. Accrual of right to compensation

Article 2. Date of Valuation

- 1263.110. Date of valuation fixed by deposit
- 1263.120. Trial within one year
- 1263.130. Trial not within one year
- 1263.140. New trial
- 1263.150. Mistrial

Article 3. Compensation for Improvements

- 1263.210. Compensation for improvements pertaining to the  
realty
- 1263.220. Business equipment
- 1263.230. Improvements removed or destroyed
- 1263.240. Improvements made after service of summons
- 1263.250. Harvesting and marketing of crops
- 1263.260. Removal of improvements

Article 4. Measure of Compensation for Property Taken

- 1263.310. Compensation for property taken
- 1263.320. Fair market value
- 1263.330. Changes in property value due to imminence of  
project

Article 5. Compensation for Injury to Remainder

- 1263.410. Compensation for injury to remainder
- 1263.420. Damage to remainder
- 1263.430. Benefit to remainder
- 1263.440. Computing damage and benefit to remainder
- 1263.450. Compensation to reflect project as proposed

Article 6. Loss of Goodwill

- 1263.510. Loss of goodwill

Article 7. Miscellaneous Provisions

- 1263.610. Performance of work to reduce compensation
- 1263.620. Partially completed improvements; performance of  
work to protect public from injury

**CHAPTER 10. DIVIDED INTERESTS**

**Article 1. General Provisions**

1265.010. Amount of compensation for divided interests

**Article 2. Leases**

1265.110. Rights under lease not affected

1265.120. Termination of lease in whole taking

1265.130. Partial cancellation of lease in partial taking

1265.140. Termination of lease in partial taking

1265.150. Time of termination or partial cancellation

1265.160. Remedies of parties not affected

**Article 3. Encumbrances**

1265.210. Acquisition of property subject to encumbrances

1265.220. Allocation of award among encumbrancers in  
partial taking

1265.230. Prepayment penalty under mortgage or trust deed

**Article 4. Options**

1265.310. Unexercised options

**Article 5. Future Interests**

1265.410. Contingent future interests

1265.420. Property subject to life tenancy

**CHAPTER 11. POSTJUDGMENT PROCEDURE**

**Article 1. Payment of Judgment; Final Order of Condemnation**

1268.010. Payment of judgment

1268.020. Remedies of defendant if judgment not paid

1268.030. Final order of condemnation

**Article 2. Deposit and Withdrawal of Award**

1268.110. Deposit after judgment

1268.120. Notice of deposit

1268.130. Increase or decrease in amount of deposit

1268.140. Withdrawal of deposit

1268.150. Deposit in State Treasury unless otherwise required

1268.160. Repayment of excess withdrawal

1268.170. Making deposit does not waive right of appeal

Article 3. Possession After Judgment

- 1268.210. Order for possession
- 1268.220. Service of order
- 1268.230. Taking possession does not waive right of appeal
- 1268.240. Police power not affected

Article 4. Interest

- 1268.310. Date interest commences to accrue
- 1268.320. Date interest ceases to accrue
- 1268.330. Offsets against interest
- 1268.340. Interest to be assessed by court

Article 5. Proration of Property Taxes

- 1268.410. Liability for taxes
- 1268.420. Application for separate valuation of property
- 1268.430. Reimbursement for taxes

Article 6. Abandonment

- 1268.510. Abandonment

Article 7. Litigation Expenses and Damages Upon Dismissal or

Judgment That No Right to Take

- 1268.610. Reimbursement of defendant upon dismissal or judgment  
that no right to take
- 1268.620. Damages caused by possession

Article 8. Costs

- 1268.710. Court costs
- 1268.720. Costs on appeal

CHAPTER 12. ARBITRATION OF COMPENSATION IN ACQUISITIONS OF PROPERTY  
FOR PUBLIC USE

- 1273.010. Arbitration of amount of compensation authorized
- 1273.020. Expenses of arbitration
- 1273.030. Effect and enforceability of agreements
- 1273.040. Abandonment of acquisition
- 1273.050. Recordation of agreements

CHAPTER 13. INVERSE CONDEMNATION

- 1274.010 et seq.