

**ASSEMBLY BILL**

**No. 1770**

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**Introduced by Assembly Member Papan**

January 9, 2002

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An act to amend Sections 1250.410 and 1255.060 of the Code of Civil Procedure, relating to eminent domain.

LEGISLATIVE COUNSEL'S DIGEST

AB 1770, as introduced, Papan. Eminent domain proceedings.

Existing law provides that in determining the litigation expenses to be awarded to the defendant as costs in an eminent domain proceeding, the court shall consider the amount of an offer made by the plaintiff to acquire the property, as specified.

This bill would also require the court to consider any deposit made by the plaintiff with the State Treasury to cover the probable compensation to be awarded to the defendant.

Existing law provides that in the trial of the issue of compensation in an eminent domain proceeding, a witness may not be impeached by reference to any appraisal report, written statement and summary of an appraisal, or other statements made in connection with a deposit or withdrawal of a deposit of probable compensation, nor may the report or statement and summary be considered an admission of any party.

This bill would instead provide that in the trial of the issue of compensation, an appraisal report, written statement and summary of an appraisal, or other statement made in connection with a deposit or withdrawal of a deposit may not be considered to be an admission of any party. However, the bill would also provide that if the person who prepared the report, statement and summary, or other statement is called at trial to give an opinion as to compensation, the report, statement and

summary, or other statement may be used for impeachment of the witness.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1250.410 of the Code of Civil  
2 Procedure is amended to read:

3 1250.410. (a) At least 20 days prior to the date of the trial on  
4 issues relating to compensation, the plaintiff shall file with the  
5 court and serve on the defendant its final offer of compensation in  
6 the proceeding and the defendant shall file and serve on the  
7 plaintiff its final demand for compensation in the proceeding. The  
8 offer and the demand shall include all compensation required  
9 pursuant to this title, including compensation for loss of goodwill,  
10 if any, and shall state whether interest and costs are included. ~~Such~~

11 *These* offers and demands shall be the only offers and demands  
12 considered by the court in determining the entitlement, if any, to  
13 litigation expenses. Service shall be in the manner prescribed by  
14 Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

15 (b) If the court, on motion of the defendant made within 30 days  
16 after entry of judgment, finds that the offer of the plaintiff was  
17 unreasonable and that the demand of the defendant was reasonable  
18 viewed in the light of the evidence admitted and the compensation  
19 awarded in the proceeding, the costs allowed pursuant to Section  
20 1268.710 shall include the defendant’s litigation expenses.

21 (c) In determining the amount of ~~those~~ litigation expenses  
22 *allowed under this section*, the court shall consider the offer  
23 required to be made by the plaintiff pursuant to Section 7267.2 of  
24 the Government Code, *any deposit made by the plaintiff pursuant*  
25 *to Chapter 6 (commencing with Section 1255.010)*, and any other  
26 written offers and demands filed and served ~~prior to~~ *before* or  
27 during the trial.

28 ~~(e)~~

29 (d) If timely made, the offers and demands as provided in  
30 subdivision (a) shall be considered by the court on the issue of  
31 determining an entitlement to litigation expenses.

32 SEC. 2. Section 1255.060 of the Code of Civil Procedure is  
33 amended to read:



1 1255.060. (a) The amount deposited or withdrawn pursuant  
2 to this chapter ~~shall~~ *may* not be given in evidence or referred to in  
3 the trial of the issue of compensation.

4 (b) In the trial of the issue of compensation, ~~a witness may not~~  
5 ~~be impeached by reference to any~~ *an* appraisal report, written  
6 statement and summary of an appraisal, or other ~~statements~~  
7 ~~statement~~ made in connection with a deposit or withdrawal  
8 pursuant to this chapter, ~~nor shall such a report or statement and~~  
9 ~~summary~~ *may not* be considered to be an admission of any party.

10 (c) Upon objection of the party at whose request an appraisal  
11 report, written statement and summary of the appraisal, or other  
12 statement was made in connection with a deposit or withdrawal  
13 pursuant to this chapter, the person who made ~~such~~ *the* report or  
14 statement and summary or other statement may not be called at the  
15 trial on the issue of compensation by any other party to give an  
16 opinion as to compensation. *If the person who prepared the report,*  
17 *statement and summary, or other statement is called at trial to give*  
18 *an opinion as to compensation, the report, statement and*  
19 *summary, or other statement may be used for impeachment of the*  
20 *witness.*

