

STUDY OF THE PROCEDURES USED BY THE  
DEPARTMENT OF TRANSPORTATION  
TO ACQUIRE LAND FOR THE  
CONSTRUCTION OF  
HIGHWAYS



*Bulletin No. 87-32*

LEGISLATIVE COMMISSION  
OF THE  
LEGISLATIVE COUNSEL BUREAU  
STATE OF NEVADA

August 1986



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Assembly Concurrent Resolution No. 45—Committee on Judiciary

FILE NUMBER...117.

ASSEMBLY CONCURRENT RESOLUTION—Directing the legislative commission to study the methods used by the department of transportation to acquire land for highways.

WHEREAS, Many citizens of Nevada are affected by the construction of highways; and

WHEREAS, Those citizens are concerned about the methods used to establish the value of the property and the consequential cost and any adverse effect caused by the acquisition of the land for the construction of a highway; now, therefore, be it

RESOLVED BY THE ASSEMBLY OF THE STATE OF NEVADA, THE SENATE CONCURRING, That the legislative commission is hereby directed to study the procedures used by the department of transportation to acquire land for the construction of highways; and be it further

RESOLVED, That the results of this study and any recommendations for legislation be reported to the 64th session of the legislature.

19  25





REPORT OF THE LEGISLATIVE COMMISSION  
TO THE MEMBERS OF THE 64TH SESSION OF THE NEVADA LEGISLATURE:

This report is submitted in compliance with Assembly Concurrent Resolution Number 45 of the 63rd Session of the Nevada Legislature. Assembly Concurrent Resolution Number 45 directs the Legislative Commission to study the methods used by the Department of Transportation to acquire property for the construction of highways.

In order to conduct the study the Legislative Commission, under the auspices of the Joint Interim Finance Committee, appointed a subcommittee to recommend appropriate action to the 1987 Session of the Legislature. Legislative members of the subcommittee were:

Senator Lawrence E. Jacobsen, Chairman  
Assemblyman Gary Lee Roberts, Vice Chairman  
Senator John M. Vergiels  
Assemblyman Eugene Collins  
\*Assemblyman Terry Tebbs

In this report the subcommittee has attempted to present its findings briefly and concisely. The report is intended as a useful guide to legislators. Considerable data was gathered in the course of the study, and much of it was provided in the form of exhibits that became part of the minutes of the subcommittee. The data which relates directly to the matters discussed in the report is included in the report. All supporting documents and minutes are on file with the Research Library at the Legislative Counsel Bureau, and are readily available to any member.

This report is transmitted to the Members of the 64th Session of the Nevada Legislature for their consideration and appropriate action.

Respectfully submitted,

Legislative Commission  
Legislative Counsel Bureau  
State of Nevada

Carson City, Nevada  
August 1986

\* Appointed by the Legislative Commission just before the third meeting of the subcommittee.

LEGISLATIVE COMMISSION

Assemblyman Louis W. Bergevin, Chairman

Senator James H. Bilbray  
Senator Helen A. Foley  
Senator Lawrence E. Jacobsen  
Senator Kenneth K. Redelsperger  
Senator Sue Wagner

Assemblyman Bob L. Kerns  
Assemblyman Robert M. Sader  
Assemblyman James W. Schofield  
Assemblyman Danny L. Thompson  
Assemblyman Barbara A. Zimmer

## SUMMARY OF RECOMMENDATIONS

1. It is recommended that, once a corridor for a highway is proposed, the state and the city and county in which the property is located assume the responsibility for notifying the owners of the property of the possible acquisition of the property for a highway.
2. It is recommended that a bill be drafted requiring the Department of Transportation, before conducting an appraisal, to mail a certified letter to the owner of property to be acquired explaining the procedures used by the department in acquiring property and advising the owner of his rights pursuant to those procedures. (BDR 35-225)
3. It is recommended that a bill be drafted incorporating the provisions of A.B. 47 of the 1985 session of the legislature with the changes recommended by a group called Freeway Watch of America.
4. It is recommended that a bill be drafted to create a board to license real estate appraisers, establish criteria for licensing and require that the Department of Transportation and the owner of the property use only licensed appraisers to conduct appraisals of property to be acquired for highways. (BDR 54-224)
5. It is recommended that the Department of Transportation continue the practice of providing an owner of property with a copy of the report of the appraisal of the property conducted by the department.
6. It is recommended that a bill be drafted to create a commission to resolve, before an action to condemn the property is filed in the courts, disputes between the Department of Transportation and the owner of property regarding the appraisal of the property to be acquired. (BDR 35-226)
7. It is recommended that a bill be drafted to require the Department of Transportation to make a recording of all negotiations with an owner of property to be acquired by the department, if the owner requests that such a recording be made. (BDR 35-225)



REPORT TO THE LEGISLATIVE COMMISSION FROM THE  
SUBCOMMITTEE TO STUDY THE PROCEDURES USED  
BY THE DEPARTMENT OF TRANSPORTATION TO  
ACQUIRE LAND FOR THE CONSTRUCTION OF HIGHWAYS

I. INTRODUCTION

In 1985, the 63rd Session of the Legislature adopted Assembly Concurrent Resolution No. 45 which required the Legislative Commission to study the methods used by the Department of Transportation to acquire land for the construction of highways. The Legislative Commission appointed a subcommittee to conduct the study. The members of the subcommittee were:

Senator Lawrence E. Jacobsen, Chairman  
Assemblyman Gary Lee Roberts, Vice Chairman  
Senator John M. Vergiels  
Assemblyman Eugene Collins  
\*Assemblyman Terry Tebbs

The subcommittee held three meetings. The first meeting was held in Las Vegas. At this meeting the subcommittee heard testimony from interested citizens and a presentation by representatives from the Department of Transportation. The second and third meetings were held in Carson City. The second meeting was devoted primarily to receiving public testimony. The subcommittee discussed its findings and recommendations at its third meeting. A majority of the subcommittee was unable to agree on any recommendations. The Legislative Commission at its October 17, 1986, meeting adopted, for inclusion in the report, the recommendations considered by the subcommittee.

The subcommittee heard testimony from other legislators, an attorney, a real estate broker, other interested citizens and representatives from the Department of Transportation and the Federal Highway Administration. The representatives from the Department of Transportation and the Federal Highway Administration provided expertise and assisted the subcommittee in its study of this matter.

- \* Appointed by the Legislative Commission before the last meeting of the subcommittee to facilitate a quorum to conduct business.

## II. DISCUSSION OF ISSUES AND RECOMMENDATIONS

Testimony at the public hearings focused the subcommittee's attention on the primary areas of conflict.

### A. APPRAISALS

There was a great deal of testimony at the hearings concerning the appraisals conducted by the Department of Transportation. The appraisal is important because it is the basis for determining the amount of the offer by the Department of Transportation as compensation for the property to be acquired and, in any proceeding in eminent domain for condemnation of the property, it is the foundation for expert testimony concerning the value of the property. The procedure used by the Department of Transportation was explained as follows by one of its representatives. After it is determined that a property will need to be acquired in order to construct a highway, the owner is so notified. An appraiser is assigned to conduct the appraisal. Before the appraisal is conducted, owners are notified, in writing, as to the person who will be appraising the property and how to contact him. The owner may accompany the appraiser on his inspection of the property. There may be one or more appraisals of each property depending on the complexity of the appraisal. After the report of the appraisal is prepared, another appraiser, the reviewing appraiser, inspects the property again, verifies the data in the report for accuracy and determines the amount to be offered for the property. A right-of-way agent is then assigned to acquire the property. He meets with the owner or the owner's authorized representative, explains the appraisal and makes the offer. The department furnished members of the subcommittee with copies of the forms used in conducting the appraisal.

#### 1. Acquisition by owner of a copy of the report of the appraisal.

At the first meeting of the subcommittee complaints were heard regarding the inability of the owner of property to obtain a copy of the report of the appraisal. It was the policy of the Department of Transportation to allow an owner to examine the report, but he was not given a copy of it. As a result of that meeting the department resolved this problem by changing its policy and permitting the owner of the property to receive a copy of the report.

The subcommittee recommends that the Department of Transportation continue the practice of providing an owner of property with a copy of the report of the appraisal of the property conducted by the department.

2. Licensing of appraisers of real property.

Questions were raised regarding the qualifications of appraisers of real property. There are no statutes in Nevada establishing minimum qualifications for these appraisers. Within the limits of budgetary constraints, training is given to appraisers working for the Department of Transportation, including on-the-job training. There are some national professional associations whose members are required to have certain minimal educational qualifications. All appraisers employed by the Department of Transportation belong to one of these professional associations. Independent appraisers are also hired by the department, sometimes from outside Nevada. Concerns were expressed regarding their ability to appraise property in Nevada. The subcommittee discussed whether to recommend legislation establishing minimum qualifications for appraisers of real property, requiring their registration or licensing and further requiring all appraisers employed by the department to be so licensed. California recently adopted legislation requiring the licensing of appraisers of real property.

It is recommended that the legislature create a board to license real estate appraisers, establish criteria for licensing and require the Department of Transportation and the owner of the property to use only licensed appraisers to conduct appraisals of property to be acquired for highways. The bill drafted to effectuate this recommendation is contained in Appendix B. (BDR 54-224)

3. Arbitration of disputes between the department and the owner of property concerning the appraisal.

Often the major dispute between the owner of the property and the Department of Transportation is the value each places on the property to be acquired. The department bases its offer on the value established by the appraisal. If a compromise can not be reached in such a dispute, a proceeding in eminent domain is initiated. Such proceedings are costly and increase the length of time involved before the acquisition is completed. To address these problems it is recommended that a commission be created to resolve these disputes before any proceeding is initiated in the courts. The bill drafted to effectuate this recommendation is contained in Appendix B. (BDR 35-226)

**B. COMMUNICATIONS BETWEEN THE DEPARTMENT OF TRANSPORTATION  
AND THE OWNERS OF PROPERTY TO BE ACQUIRED**

It was apparent from the testimony at the public hearings that many complaints were the result of poor communication between the owner of the property and the representatives of the Department of Transportation. Some owners felt they had not been adequately informed of the procedures that would be used to acquire their property or of their rights under those procedures. A representative of the department explained the procedures in general terms as follows. Once the location of a project is determined, hearings on the design of the project are conducted by the department. At this time owners of affected property are notified that their property may be acquired for the project. Once the hearings are completed, if money is available, preparations are made to begin appraising the property to be acquired. After the appraisal, a representative of the department is assigned to contact the owner, preferably in person. The representative should explain the basis for the appraisal. He is required to keep a record of the discussions he has with the owner and to confirm in writing the offer made. At this point the representative explains the state's responsibilities and the process for acquisition of the property. If residential property is involved, a relocation agent is assigned to assist the owner in finding replacement property, to help arrange for moving and to determine what payments, if any, a displaced person is eligible to receive in addition to the purchase price for the property acquired by the department and the costs of moving.

Owners of property complained that they were allowed to purchase property known by the department to be in the area of a proposed freeway and were not informed of that proposal. Others felt that the procedures and their rights were not explained adequately to them or presented in a timely manner and that in a dispute it was their word against that of the department. Some felt that the representatives of the department were indifferent and callous toward owners of property during the process of negotiations. To alleviate these problems, the following recommendations were adopted:

1. That once a corridor for a highway is proposed, the state and the city and county in which the property is located assume the responsibility for notifying the owners of the property of the possible acquisition of the property.



2. That a bill be drafted to require the Department of Transportation to make a recording of all the negotiations with an owner of property to be acquired by the department, if the owner requests that such a recording be made. The bill draft to effectuate this recommendation is contained in Appendix B. (BDR 35-225)

3. That a bill be drafted requiring the department, before conducting an appraisal, to mail a certified letter to the owner of property to be acquired explaining the procedures used by the department in acquiring property and advising the owner of his rights pursuant to those procedures. The bill draft to effectuate this recommendation is contained in Appendix B. (BDR 35-225)

#### C. ASSEMBLY BILL NO. 47 OF THE 1985 LEGISLATIVE SESSION

Representatives from an organization called Freeway Watch of America, Inc., actively participated in all meetings of the subcommittee. Its members had been owners of property acquired by the Department of Transportation or were owners of property abutting a freeway. They testified concerning the conduct of representatives of the department, the lengthy negotiations and the inequities that resulted from the taking of property. They proposed the adoption of a bill incorporating the provisions of Assembly Bill No. 47 of the 1985 session of the legislature with certain changes. It was argued that this would protect owners of property from the inequities resulting from the present procedures. Many of the provisions of Assembly Bill No. 47 are in conflict with federal law or, if adopted, would result in the federal government's refusal to provide money for a project. A bill was not drafted to effectuate this recommendation because it was understood by all interested parties that an attempt would be made to amend the federal law before this proposal would be presented to the Nevada Legislature.

#### D. OTHER ISSUES PRESENTED TO THE SUBCOMMITTEE

The following matters were raised at the hearings but no solutions were proposed.

##### 1. Length of time for completion of a project.

Many of the problems heard by the subcommittee were attributable to the fact that there is a great length of time between the date when an area has been designated for a highway and the date the property is actually acquired. For a major project this can be 10 years or more. Availability of money and the priority given the project are major causes of these delays in addition to the time it takes to complete the whole process from the hearings on the project to the actual acquisition of the property.

## 2. Rental properties.

Property is acquired by the department in advance of the actual construction or improvement of a highway or in order to avoid payment of excessive damages. NRS 408.501 authorizes the department to rent or lease such properties. Residents complained that these properties were not properly maintained, were left vacant and vandalized and were used by transients and prostitutes.

## 3. Denial of building permits for improvements.

Once a corridor for a project is established, owners of property within that corridor are often denied building permits to make improvements on the property.

NRS 278.570 to 278.585, inclusive, authorize cities and counties to adopt building codes, provide for the inspection of structures and enforce zoning regulations by withholding building permits.

## 4. Attorney's fees and cost of an appraisal.

If an owner of property employs an attorney to represent him in any matter regarding the condemnation or an appraiser to conduct an independent appraisal of the property, these expenses generally are not reimbursable. Courts in some jurisdictions have construed statutes that authorize payment of costs, but do not expressly authorize payment of attorney's fees, as not intending to provide for the payment of these fees. 27 Am.Jur.2d Eminent Domain § 476 (1966). This view was adopted by Nevada in Lamar v. Urban Renewal, 84 Nev. 580 at 581 (1968). If a proceeding in eminent domain is initiated, NRS 37.190 authorizes payment of costs, but limits the amount for an appraisal to \$350 for an appraisal used at trial. NRS 37.190 does not authorize payment of attorney's fees.

The subcommittee requested information as to how this is handled in some of the other states.

## ARIZONA

If the state tenders to an owner of property or deposits in court an amount for the property which the owner has refused as just compensation, the owner must pay all costs of the proceeding if the award is less than the amount offered. Ariz. Rev. Stat. Ann. § 12-1161.

## CALIFORNIA

In any proceeding for inverse condemnation, the owner must be reimbursed for his reasonable costs and expenses, including reasonable attorney's fees, fees for an appraisal and engineering fees. Cal. Civ. Code § 1036 (West).

In addition, the term "litigation fees," in an action for condemnation of property, is defined to include reasonable attorney's fees and fees for appraisals. Cal. Civ. Proc. Code § 1235.140 (West). The court is required to award litigation expenses:

(a) Where it determines that the final offer required by the public entity was unreasonable and that the defendant's final offer was reasonable in light of the evidence submitted and the compensation awarded. Cal. Civ. Proc. Code § 1250.410 (West).

(b) If the proceeding is wholly or partly dismissed for any reason. Cal. Civ. Proc. Code § 1268.610 (West).

(c) If the final judgment is that the governmental entity cannot acquire the property. Cal. Civ. Proc. Code § 1268.610 (West).

The court may require the payment of the expenses of litigation as a condition of permitting testimony of a witness concerning the valuation of the property where the witness was not included on the list of expert witnesses or in the statements of valuation data required of the party seeking to introduce such testimony. Cal. Civ. Proc. Code § 1258.290 (West).

## OREGON

In a proceeding for inverse condemnation, if the owner prevails, he is entitled to costs and disbursements and reasonable attorney's fees. Or. Rev. Stat. § 20.085.

If the action is abandoned by the condemnor, the judgment must include reasonable attorney's fees and reasonable expenses. "Expenses" is defined to include the cost of an appraisal. Or. Rev. Stat. § 35.335.

If a trial is held for fixing the amount of compensation for the property, the owner of the property is entitled to receive attorney's fees and reasonable expenses, including the cost of the appraisal if:

(a) The amount of the judgment exceeds the highest written offer submitted in settlement by the condemnor prior to the trial; or

(b) The court finds that the first written offer by the condemnor did not constitute a good faith offer.

In all other cases, attorney's fees and costs of appraisal are specifically excluded as part of the award. Or. Rev. Stat. § 35.346.

#### UTAH

If the state abandons the proceedings, the owner of the property must be reimbursed in full for all reasonable and necessary expenses actually incurred by him because of the condemnation, including attorney's fees. Utah Code Ann. § 78-34-16. There are no other provisions for attorney's fees or fees for an appraisal.

Copies of these statutes are contained in Appendix A.

#### 5. Abutting property.

There was a great deal of testimony concerning damages incurred by owners of property abutting a freeway. They suffered from increased noise and dust from the highway, sometimes a loss in value of their property, the trauma of having their neighborhoods destroyed as well as the noise, dirt and other problems that occurred during the actual construction of the highway. These are not compensable items. Increasing the width of the right-of-way is considered impractical because it would increase substantially the cost of the freeway. The department does conduct studies regarding the levels of noise and when the level reaches a prescribed number of decibels over a given period, sound barriers are erected.

### III. APPEARANCES

The following is a list of names of persons who appeared before the subcommittee:

Assemblyman James J. Banner  
2223 Poplar Avenue  
Las Vegas, Nevada 89101

Conway Barlow  
Federal Highway Administration  
1535 Hot Springs Road, Suite 100  
Carson City, Nevada 89701

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Juanita Clark  
137 Lorenzi  
Las Vegas, Nevada 89101

Jack Crawford  
Department of Transportation  
Carson City, Nevada 89712

Russ Driver  
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Henderson, Nevada 89015

Garth Dull, Director  
Department of Transportation  
Carson City, Nevada 89712

Bob Elkhurst  
Las Vegas, Nevada

Ethel Flanders  
Las Vegas, Nevada

Emerson Hall  
Las Vegas, Nevada

Assemblyman Jane F. Ham  
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Carson City, Nevada 89710

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Arizona Revised Statutes Annotated

**§ 11-972. Litigation expenses**

A. The court having jurisdiction of a proceeding instituted by an acquiring agency to acquire real property by condemnation shall award the owner of any right, or title to, or interest in such real property, such sum as will reimburse such owner for his reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees actually incurred because of the condemnation proceedings if either of the following occur:

1. The final judgment is that the acquiring agency cannot acquire the real property by condemnation.
2. The proceeding is abandoned by the acquiring agency.

B. Where an inverse condemnation proceeding is initiated by the owner of any right, title or interest in real property because of the alleged physical taking of his property for any public purpose, the court, rendering judgment for the plaintiff in such proceeding and awarding compensation for the physical taking of property, or the acquiring agency effecting a settlement of any such proceedings, shall determine and award or allow to such plaintiff as a part of such judgment or settlement such sum as will, in the opinion of the court or the acquiring agency, reimburse such plaintiff for his reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred because of such proceeding.

Added Laws 1972, Ch. 140, § 1, eff. May 13, 1972.

West's Annotated California Code  
California Civil Code

**§ 1036. Inverse condemnation proceeding**

In any inverse condemnation proceeding brought for the taking of any interest in real property, the court rendering judgment for the plaintiff by awarding compensation for such taking, or the attorney representing the public entity who effects a settlement of such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will, in the opinion of the court or such attorney, reimburse such plaintiff for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding.

(Added by Stats.1975, c. 1240, p. 3164, § 8, operative July 1, 1976.)

West's Annotated California Code  
California Civil Procedure Code

**§ 1235.140. Litigation expenses**

"Litigation expenses" includes both of the following:

(a) All expenses reasonably and necessarily incurred in the proceeding in preparing for trial, during trial, and in any subsequent judicial proceedings.

(b) Reasonable attorney's fees, appraisal fees, and fees for the services of other experts where such fees were reasonably and necessarily incurred to protect the defendant's interests in the proceeding in preparing for trial, during trial, and in any subsequent judicial proceedings whether such fees were incurred for services rendered before or after the filing of the complaint.

(Added by Stats.1975, c. 1275, p. 3411, § 2, operative July 1, 1976.)

**§ 1250.410. Final offer and demand; reasonableness; costs; litigation expenses**

(a) At least 30 days prior to the date of the trial on issues relating to compensation, the plaintiff shall file with the court and serve on the defendant its final offer of compensation in the proceeding and the defendant shall file and serve on the plaintiff " " its final demand for compensation in the proceeding. Such offers and demands shall be the only offers and demands considered by the court in determining the entitlement, if any, to litigation expenses. Service shall be in the manner prescribed by Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

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

In determining the amount of such litigation expenses, the court shall consider the offer required to be made by the plaintiff pursuant to Section 7267.2 of the Government Code and any other written " " offers and demands filed and served prior to or during the trial.

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

(Amended by Stats.1982, c. 1059, p. 3833, § 2.)

**§ 1258.290. Grounds for court authority to call witnesses or permit testimony by witness**

(a) The court may, upon such terms as may be just (including but not limited to continuing the trial for a reasonable period of time and awarding costs and litigation expenses), permit a party to call a witness, or permit a witness called by a party to testify to an opinion or data on direct examination, during the party's case in chief where such witness, opinion, or data is required to be, but is not, included in such party's list of expert witnesses or statements of valuation data if the court finds that such party has made a good faith effort to comply with Sections 1258.210 to 1258.260, inclusive, that he has complied with Section 1258.270, and that by the date of exchange he:

(1) Would not in the exercise of reasonable diligence have determined to call such witness or discovered or listed such opinion or data; or

(2) Failed to determine to call such witness or to discover or list such opinion or data through mistake, inadvertence, surprise, or excusable neglect.

(b) In making a determination under this section, the court shall take into account the extent to which the opposing party has relied upon the list of expert witnesses and statements of valuation data and will be prejudiced if the witness is called or the testimony concerning such opinion or data is given.

(Added by Stats.1975, c. 1275, p. 3445, § 2, operative July 1, 1976.)

**§ 1268.610 Award of litigation expenses; dismissal or final judgment that plaintiff cannot acquire property; cost bill**

(a) Subject to subdivision (b), the court shall award the defendant his litigation expenses whenever:

(1) The proceeding is wholly or partly dismissed for any reason; or

(2) Final judgment in the proceeding is that the plaintiff cannot acquire property it sought to acquire in the proceeding.

(b) Where there is a partial dismissal or a final judgment that the plaintiff cannot acquire a portion of the property originally sought to be acquired, or a dismissal of one or more plaintiffs pursuant to Section 1260.020, the court shall award the defendant only those litigation expenses, or portion thereof, that would not have been incurred had the property sought to be acquired following the dismissal or judgment been the property originally sought to be acquired.

(c) Litigation expenses under this section shall be claimed in and by a cost bill to be prepared, served, filed, and taxed as in a civil action. If the proceeding is dismissed upon motion of the plaintiff, the cost bill shall be filed within 30 days after notice of entry of judgment.

(Added by Stats.1975, c. 1275, p. 3462, § 2, operative July 1, 1976.)

Oregon Revised Statutes

**20.085 Costs and attorney fees in inverse condemnation proceedings.** In a proceeding brought under section 18, Article I or section 4, Article XI, of the Oregon Constitution by an owner of property or by a person claiming an interest in property, if the owner or other person prevails, the owner or other person shall be entitled to costs and disbursements and reasonable attorney fees at trial and on appeal. [1965 c.484 §1; 1981 c.897 §2]

**35.346 Offer to purchase required prior to filing action for condemnation; when costs and disbursements allowed.** (1) ~~At least~~ 20 days prior to the filing of any action for condemnation of property or any interest therein, the condemner shall make a written offer to the owner or party having an interest to purchase the property or interest, and to pay a stated amount as compensation therefor and for any compensable damages to remaining property.

(2) If a trial is held for the fixing of the amount of compensation to be awarded to the defendant owner or party having an interest in the property being condemned, the court shall award said defendant costs and disbursements including reasonable attorney fees and reasonable expenses as defined in ORS 35.335 (2) in the following cases, and no other:

(a) If the amount of just compensation assessed by the verdict in the trial exceeds the highest written offer in settlement submitted by condemner to those defendants appearing in the action at least 30 days prior to commencement of said trial; or

(b) If the court finds that the first written offer made by condemner to defendant in settlement prior to filing of the action did not constitute a good faith offer of an amount reasonably believed by condemner to be just compensation.

(3) Costs and disbursements other than reasonable attorney fees and expenses as defined in ORS 35.335 (2) shall be awarded to condemner in all cases other than those in which defendant is entitled to costs and disbursements under subsection (2) of this section. [1973 c.617 §2 (enacted in lieu of 35.345)]

Utah Code Annotated

**78-34-16. Occupancy of premises pending action—Substitution of bond for deposit paid into court—Abandonment of action by condemner.**—In the event that no order is entered by the court permitting payment of said deposit on account of the just compensation to be awarded in the proceeding within thirty (30) days following its deposit, the court may, on application of the condemning authority, permit the substitution of a bond in such amount and with such sureties as shall be determined and approved by the court. Condemner, whether a public or private body, may, at any time prior to final payment of compensation and damages awarded the defendant by the court or jury, abandon the proceedings and cause the action to be dismissed without prejudice, provided, however, that as a condition of dismissal condemner first compensate condemnee for all damages he has sustained and also reimburse him in full for all reasonable and necessary expenses actually incurred by condemnee because of the filing of the action by condemner, including attorneys fees.



## APPENDIX B

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**SUMMARY--Regulates occupation of appraiser of real property. (BDR 54-224)**

**FISCAL NOTE: Effect on Local Government: Yes.**

**Effect on the State or on Industrial Insurance: Yes.**

**AN ACT relating to the appraisal of real property; requiring the licensing of appraisers of real property; creating a board of appraisers of real property; providing for its organization, powers and duties; providing penalties; and providing other matters properly relating thereto.**

**THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:**

**Section 1.** Title 54 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 45, inclusive, of this act.

**Sec. 2.** As used in this chapter, unless the context otherwise requires:

**1. "Appraise" means to:**

**(a) Determine the value of property;**

**(b) Forecast the earning power of property; or**

(c) Estimate the cost of replacement of existing property by purchase or production of equivalent property.

2. "Board" means the board of appraisers of real property.

3. "Property" includes any real property and any estate or interest in real property, but excludes personal property.

**Sec. 3.** The purpose of licensing appraisers is to protect the public and the general welfare of the people of this state. Any license issued pursuant to this chapter is a revocable privilege and the holder of such a license does not acquire thereby any vested right.

**Sec. 4.** This chapter does not apply to:

1. A licensed real estate broker or real estate salesman appraising real estate to estimate values for sale and listing in the ordinary course of his occupation, except when a separate fee is paid therefor.

2. Estimators of costs performing services in the preparation of bids or proposals for construction projects.

3. Accountants making forecasts of income and expenses in the normal course of accounting and auditing practice.

4. County assessors performing the duties of an appraiser for tax purposes or any person holding a valid appraiser's certificate issued by the department of taxation.

**Sec. 5.** The board of appraisers of real property, consisting of five members appointed by the governor, is hereby created. After the initial terms, the term of office of each member is 4 years.

**Sec. 6. 1.** Four members of the board must be persons who have been actively engaged in the practice of appraising for at least 10 years preceding their respective appointments. After the initial terms, each of the members appointed pursuant to this subsection must be licensed as appraisers pursuant to this chapter.

**2.** The remaining member must be a resident of Nevada who is not:

**(a)** Licensed in any state as an appraiser.

**(b)** Employed by an appraiser.

**Sec. 7. 1.** Upon expiration of his term of office, a member shall continue to serve until a person qualified under this chapter is appointed as his successor.

**2.** If a member fails to attend meetings of the board or a member fails to attend to the business of the board, as determined necessary in the discretion of the board, the board shall so notify the governor, and the governor shall appoint a person qualified under this chapter to replace the member for the remainder of the unexpired term.

**Sec. 8.** Before entering upon the duties of his office, each member of the board shall take:

**1.** The constitutional oath of office.

2. An oath that he is legally qualified to serve on the board.

**Sec. 9.** 1. The board shall elect from its members a president, a vice president and a secretary.

2. The secretary is entitled to receive a salary, the amount of which must be determined by the board, in addition to the salary provided pursuant to section 11 of this act.

**Sec. 10.** 1. The board shall meet at least twice annually and may meet at other times on the call of the president or a majority of its members.

2. A majority of the board constitutes a quorum to transact all business.

**Sec. 11.** 1. Each member of the board is entitled to receive:

(a) A salary of not more than \$60 per day, as fixed by the board, while engaged in the business of the board.

(b) Reimbursement for his actual and necessary expenses incurred in the performance of his duties.

2. Salaries and other expenses must be paid from the fees received by the board under the provisions of this chapter, and no part of the salaries or expenses of the board may be paid out of the state general fund.

3. All money received by the board must be deposited in banks and savings and loan associations in this state, and must be paid out on its order for its expenses and the expenses of the members.

**Sec. 12.** The board shall procure a seal.

**Sec. 13.** The board shall operate on the basis of a fiscal year commencing on July 1 and terminating on June 30.

**Sec. 14.** The board may:

1. Maintain offices in as many localities in the state as it finds necessary to carry out the provisions of this chapter.

2. Employ attorneys, investigators and other professional consultants and clerical personnel necessary to the discharge of its duties.

**Sec. 15.** The board may adopt:

1. Regulations establishing guidelines for advertising the practice of appraising; and

2. Such other regulations as are necessary or desirable to enable it to carry out the provisions of this chapter.

**Sec. 16.** 1. The secretary or president of the board may issue subpoenas to compel the attendance of witnesses and the production of books and papers.

2. If any witness refuses to attend or testify or produce any books and papers as required by the subpoena, the secretary or president of the board may report to the district court by petition, setting forth that:

(a) Due notice has been given of the time and place of attendance of the witness or the production of the books and papers;

(b) The witness has been subpoenaed by the board pursuant to this section;  
and

(c) The witness has failed or refused to attend or produce the books and papers required by the subpoena before the board which is named in the subpoena, or has refused to answer questions propounded to him, and asking for an order of the court compelling the witness to attend and testify or produce the books and papers before the board.

3. Upon such a petition, the court shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than 10 days from the date of the order, and then and there show cause why he has not attended or testified or produced the books or papers before the board. A certified copy of the order must be served upon the witness.

4. If it appears to the court that the subpoena was regularly issued by the board, the court shall enter an order that the witness appear before the board at the time and place fixed in the order and testify or produce the required books or papers, and upon failure to obey the order the witness shall be dealt with as for contempt of court.

**Sec. 17.** A license as an appraiser may be issued to any person who:

1. Is a citizen of the United States or is lawfully entitled to remain and work in the United States;
2. Is of good moral character and has a reputation for honesty and integrity;



3. Meets the requirements for experience and academic training prescribed by the board; and

4. Meets any additional requirements established by the board.

**Sec. 18. 1.** An applicant for a license as an appraiser must submit to the board, through its secretary:

(a) Evidence satisfactory to the board that he meets the requirements for licensing; and

(b) Such other evidence, documents or proof of qualification as the board deems necessary.

2. If it appears that the applicant is not of good moral character or reputation or that any credential submitted is false, the application may be rejected.

**Sec. 19. 1.** Before issuance of a license as an appraiser, an applicant who is otherwise eligible for licensure in this state and has paid the fee and presented the required credentials must appear personally and pass a written examination.

2. The examination must be fair and impartial, practical in character and the questions must be designed to discover the applicant's fitness.

3. The board may employ specialists and other professional consultants or examining services in conducting the examination.

**Sec. 20. 1.** If an applicant fails in a first examination, he may be re-examined after not less than 6 months.

**2.** If he fails in a second or subsequent examination, he is not thereafter entitled to another examination within less than 1 year after the date of the last examination, and before taking another examination he must furnish proof satisfactory to the board of sufficient further training following the last examination.

**Sec. 21.** The board may license an applicant who holds a valid license or certificate issued to him by the licensing board for appraisers of the District of Columbia or of any state or territory of the United States, if:

**1.** The legal requirements of the licensing board were, at the time of issuing the license or certificate, in no degree or particular less than those of this state at the time when the license or certificate was issued.

**2.** The applicant is of good moral character and reputation.

**3.** The applicant passes an oral examination, if required by the board.

**4.** The applicant furnishes to the board such other proof of qualifications, professional or moral, as the board requires.

**Sec. 22.** The board shall maintain records pertaining to applicants to whom licenses have been issued or denied. The records must contain:

**1.** The name and address of each applicant.

**2.** A description of the training and education of the applicant.

3. The date of issuance or denial of the license.

4. Any other information required by the board.

**Sec. 23.** All licenses issued by the board must bear its seal and the signatures of its president and secretary. A license authorizes the person to whom it is issued to engage in the practice of appraising.

**Sec. 24.** The board may establish areas of specialization in appraising and issue licenses to practice appraising in those areas of specialization. The areas of specialization must be classified by degrees of expertise and type of property in a manner consistent with established usage and procedure in the practice of appraising.

**Sec. 25.** 1. The board may issue to a qualified applicant a limited license as a trainee in appraising if:

(a) The applicant is employed for more than 60 days in any calendar year by a licensed appraiser; and

(b) The applicant's employer applies for the license within 60 days after the applicant's employment begins.

2. A licensed trainee may assist an appraiser in the analysis of data leading to a conclusion as to value or in other aspects of appraisal. A trainee shall not practice or offer to practice appraising or assume responsibility for an appraisal in his own right.

3. The trainee and his employer are jointly and severally liable for any violation of the provisions of this chapter by the trainee.

4. A limited license is valid for a period specified by the board, but may be renewed. When a limited license is issued or renewed, the board shall specify the date on which the license expires, which must not be more than 1 year after the date on which the license is issued or renewed.

5. A limited license granted under this section may be revoked by the board at any time for any of the grounds for initiating disciplinary action under this chapter.

**Sec. 26. 1.** To renew a license issued pursuant to this chapter, a person must, on or before January 1 of each year:

- (a) Apply to the board for renewal;
- (b) Pay the annual fee for renewal set by the board; and
- (c) Submit evidence to the board of his completion of the requirements for continuing education.

2. The board shall, as a prerequisite for the renewal or restoration of a license, require each holder of a license to comply with the requirements for continuing education adopted by the board.

3. A holder who fails to pay the annual fee for renewal within 60 days after it becomes due automatically forfeits his right to practice as an appraiser, and

his license to practice as an appraiser in Nevada is automatically suspended. The holder may, within 2 years after the date his license is suspended, apply for the restoration of his license.

4. The board shall notify any holder whose license is automatically suspended for nonpayment of the annual fee for renewal.

**Sec. 27. 1.** Except as provided in subsection 4, each applicant for a license as an appraiser must:

(a) Pay a fee of \$50; and

(b) Pay the cost of obtaining such further evidence and proof of qualifications as the board may require pursuant to section 18 of this act.

2. Each applicant who fails an examination and who is permitted to be re-examined must pay a fee not to exceed \$50 for each re-examination.

3. If an applicant does not appear for examination, for any reason deemed sufficient by the board, the board may, upon request, refund a portion of the application fee not to exceed \$25. There must be no refund of the application fee if an applicant appears for examination.

4. Each applicant for a limited license issued pursuant to section 25 of this act must pay a fee not to exceed \$25, as determined by the board, and must pay a fee of \$25 for each renewal of the license.

5. The fee for the renewal of a license, as determined by the board, must not exceed \$50 per year and must be collected for the year in which an appraiser is licensed.

6. The fee for the restoration of a suspended license is twice the amount of the fee for the renewal of a license at the time of the restoration of the license.

**Sec. 28.** The grounds for initiating disciplinary action under this chapter are:

1. Unprofessional conduct.
2. Conviction of:
  - (a) A felony.
  - (b) Any offense involving moral turpitude.
3. Suspension or revocation of the license to practice as an appraiser by any other jurisdiction.

**Sec. 29.** The following acts by an appraiser, among others, constitute unprofessional conduct:

1. Willfully making a false or fraudulent statement or submitting a forged or false document in applying for a license to practice as an appraiser.
2. Advertising the practice of appraising in a manner which does not conform to guidelines established by regulations of the board.
3. Permitting his signature to be affixed to any report of an appraisal not prepared by him or under his personal supervision.

4. Accepting an engagement to appraise a property where his employment or fee is contingent upon the appraised value of the property or a finding he is to report.

5. In cases where monetary damages are involved, making his compensation as an appraiser contingent upon the amount of damages which may be agreed upon or finally decreed.

6. Testifying as an expert witness as to any matter related to an appraisal in any action or proceeding in this state without the appropriate license under this chapter.

7. Habitual drunkenness or habitual addiction to the use of a controlled substance as defined in chapter 453 of NRS.

8. Engaging in any:

(a) Professional conduct which is intended to deceive or which the board by regulation has determined is unethical.

(b) Practice harmful to the public or conduct detrimental to the public.

9. Willful disobedience of the regulations of the board.

10. Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any prohibition made in this chapter.

**Sec. 30.** If the board or any of its members, becomes aware that any one or combination of the grounds for initiating disciplinary action may exist as to a person practicing appraising in this state, it shall, and any other person who is so aware may, file a written complaint specifying the relevant facts with the board.

**Sec. 31. 1.** The board shall review each complaint filed.

2. If, from the complaint or from other official records, it appears that the complaint is not frivolous and the complaint charges unprofessional conduct, a conviction or the suspension or revocation of a license to practice appraising, the board shall proceed with appropriate disciplinary action.

**Sec. 32. 1.** In addition to any other remedy provided by law, the board, through its president or secretary or the attorney general, may apply to any court of competent jurisdiction to enjoin any unprofessional conduct of an appraiser which is harmful to the public or to limit the appraiser's practice or suspend his license.

2. The court in a proper case may issue a temporary restraining order or a preliminary injunction:

(a) Without proof of actual damage sustained by any person, this provision being a preventive as well as punitive measure.



(b) Pending proceedings for disciplinary action by the board. Those proceedings must be instituted and determined as promptly as the requirements for investigation of the case reasonably allow.

**Sec. 33.** All proceedings after the filing of a complaint are confidential, except to the extent necessary for the conduct of an investigation, until the board determines to proceed with disciplinary action. If the board dismisses the complaint, the proceedings remain confidential. If the board proceeds with disciplinary action, confidentiality concerning the proceedings is no longer required.

**Sec. 34.** If a complaint charging unprofessional conduct, a conviction or the suspension or revocation of a license to practice appraising is not frivolous, the secretary of the board shall fix a time and place for a hearing and cause a notice of the hearing and a formal complaint prepared by the board to be served on the person charged at least 20 days before the date fixed for the hearing.

**Sec. 35. 1.** Service of process made under this chapter must be either personal or by registered or certified mail with return receipt requested, addressed to the appraiser at his last known address, as indicated on the records of the board, if possible. If personal service cannot be made and if notice by mail is returned undelivered, the secretary of the board shall cause

notice of hearing to be published once a week for 4 consecutive weeks in a newspaper published in the county of the appraiser's last known address or, if no newspaper is published in that county, then in a newspaper widely distributed in that county.

2. Proof of service of process or publication of notice made under this chapter must be filed with the secretary of the board and must be recorded in the minutes of the board.

**Sec. 36.** In any disciplinary proceeding before the board:

1. Proof of actual injury need not be established where the complaint charges deceptive or unethical professional conduct or practice harmful to the public.

2. A certified copy of the record of a court or a licensing agency showing a conviction or the suspension or revocation of a license to practice appraising is conclusive evidence of its occurrence.

**Sec. 37.** 1. The person charged is entitled to a hearing before the board, but the failure of the person charged to attend his hearing or his failure to defend himself does not serve to delay or void the proceedings. The board may, for good cause shown, continue any hearing.

2. If the board finds the person guilty as charged in the complaint, it may by order:

(a) Place the person on probation for a specified period or until further order of the board.

(b) Administer to the person a public or private reprimand.

(c) Limit the practice of the person as the board deems fit.

(d) Suspend the license of the person to practice appraising for a specified period or until further order of the board.

(e) Revoke the license of the person to practice appraising.

The order of the board may contain such other terms, provisions or conditions as the board deems proper which are not inconsistent with law.

**Sec. 38. 1.** Every order of the board which limits the practice of appraising or suspends or revokes a license is effective from the date the secretary certifies the order until the date the order is modified or reversed by a final judgment of the court. The court shall not stay the order of the board unless the board has failed to comply with the procedural requirements provided for in NRS 233B.140.

2. The district court shall give a petition for judicial review of the board's order priority over other civil matters which are not expressly given priority by law.

**Sec. 39. 1.** Any person:

(a) Whose practice of appraising has been limited; or

(b) Whose license to practice appraising has been:

(1) Suspended until further order; or

(2) Revoked,

by an order of the board may apply to the board after a reasonable period for removal of the limitation or restoration of his license.

2. In hearing the application, the board:

(a) Shall determine whether under all the circumstances the time of the application is reasonable.

(b) May deny the application or modify or rescind its order as it deems the evidence and the public safety warrants.

**Sec. 40.** The board or any other person who initiates or assists in any lawful investigation or proceeding concerning the discipline of an appraiser is immune from any civil action for that initiation or assistance or any consequential damages, if the person acted without malicious intent.

**Sec. 41.** The filing and review of a complaint, its dismissal without further action and any subsequent disposition by the board or any reviewing court do not preclude any appropriate criminal prosecution by the attorney general or a district attorney based upon the same or other facts.

**Sec. 42.** The board through its president or secretary or the attorney general may maintain in any court of competent jurisdiction a suit for an injunction against any person practicing appraising without a license. Such an injunction:

1. May be issued without proof of actual damage sustained by any person, this provision being a preventive as well as a punitive measure.

2. Does not relieve such a person from criminal prosecution for practicing without a license.

**Sec. 43.** In charging any person with a violation of this chapter by practicing appraising without a license, it is sufficient to charge that, upon a certain day, and in a certain county of this state, he engaged in the practice of appraising without a license.

**Sec. 44.** Any person who:

1. Presents as his own the license or credentials of another;
  2. Gives either false or forged evidence of any kind to the board or any member thereof, in connection with an application for a license to practice appraising; or
  3. Practices appraising under a false or assumed name or falsely personates another licensee of a like or different name,
- is guilty of a misdemeanor.

**Sec. 45.** Any person who:

1. Engages in the practice of appraising;
2. Holds himself out as qualified to practice appraising; or

3. Uses in connection with his name the words "appraiser," "appraising" or any other title, word, letter or other designation intended to imply or designate him as an appraiser of property, in this state without first obtaining a license as provided in this chapter, is guilty of a gross misdemeanor.

**Sec. 46.** Chapter 37 of NRS is hereby amended by adding thereto a new section to read as follows:

*All property and interests in property taken for public use under the right of eminent domain must be appraised by an appraiser of real property licensed pursuant to sections 2 to 45, inclusive, of this act.*

**Sec. 47.** The governor shall appoint to the board of appraisers of real property:

1. Two members, including the member appointed pursuant to subsection 2 of section 6 of this act, to terms ending on June 30, 1991;
2. One member to a term ending on June 30, 1990;
3. One member to a term ending on June 30, 1989; and
4. One member to a term ending on June 30, 1988.

SUMMARY--Revises provisions concerning acquisition of property for highways. (BDR 35-225)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to highways; allowing an owner of property to require recording of conversations relating to acquisition of his property for highways; requiring the department of transportation to inform an owner of property of his rights with respect to the acquisition of his property; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 408 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. A person whose property is subject to acquisition pursuant to NRS 408.489 may require the department to record electronically and preserve any conversation with a representative of the department concerning the property. The equipment for recording must be provided by the department.*

2. *After determining to acquire property and before conducting a survey or appraisal, the department must notify the owner in writing concerning its intentions. The notice must be sent by certified mail and must contain:*

*(a) An explanation of each procedure followed by the department to acquire property for highway purposes.*

*(b) A statement informing the owner of property of his rights pursuant to subsection 1.*

*(c) An explanation of the remedies available to an owner of property through any administrative body or in any court if an owner is not satisfied with the appraisal conducted by the department.*

*The department is not required to inform an owner of property of his rights if an action in eminent domain has been commenced.*

3. *The director shall by regulation establish the procedures for providing notice to an owner of property and for recording and preserving conversations as provided in subsection 1.*



**SUMMARY--Establishes commission to review appraisals of property acquired for highway purposes. (BDR 35-226)**

**FISCAL NOTE:**           Effect on Local Government: No.

Effect on the State or on Industrial Insurance: Yes.

**AN ACT relating to highways; establishing a commission to review appraisals of property to be acquired for highway purposes; prescribing its powers and duties; and providing other matters properly relating thereto.**

**THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:**

**Section 1.** Chapter 408 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this act.

**Sec. 2.** *As used in NRS 408.487 to 408.547, inclusive, and sections 2 to 10, inclusive, of this act, "commission" means the commission to review appraisals.*

**Sec. 3. 1.** *After an appraisal pursuant to NRS 408.493, the department shall establish an amount representing just compensation for the land and any improvements. An offer of money in that amount must be made to the owner.*

2. *In making an offer to an owner the department shall:*

*(a) Provide him with a copy of the report of the appraisal conducted by the department;*

*(b) Inform him that he may meet with a representative of the department to review the appraisal; and*

*(c) Advise him regarding his right to appeal and the procedures for appeal of the decision of the department.*

**Sec. 4. 1.** *There is hereby created the commission to review appraisals.*

*2. The commission consists of three members appointed by the governor. One member must be an appraiser actively engaged in the field of appraisals. Two members must be representatives of the general public. The term for each member is 1 year.*

*3. The members of the commission shall elect one of the members to preside at any meeting of or hearing conducted by the commission.*

*4. A commissioner who is not in the employ of the State of Nevada is entitled to receive a salary of \$60 for each day or portion thereof during which he is in attendance at a meeting of the commission. A commissioner who is in the regular employ of the state shall serve without additional salary. Claims for payment of all expenses incurred by the commission, including the salaries and expenses of the commissioners, must be made on vouchers and paid as other claims against the state are paid.*

**Sec. 5. 1.** *If a property owner disagrees with the department concerning the value of his property, he may submit the dispute for arbitration by the commission. The owner must submit the dispute within 15 days after the department informs him that it will not make another offer for his property and that it will commence an action in eminent domain if he does not submit the dispute within the 15-day period.*

**2.** *No legal action may be filed concerning the value of the property, including an action in eminent domain, until:*

*(a) The owner fails to submit the dispute for arbitration within the time allowed in subsection 1; or*

*(b) The commission certifies that it cannot resolve the dispute.*

**Sec. 6.** *The commission shall:*

**1.** *Review any examination, survey, investigation or appraisal of property conducted by the department which is disputed by the property owner;*

**2.** *Make every effort to reach a consensus which is satisfactory to the parties concerning the value of the property; and*

**3.** *Make findings concerning the value of the property and prepare a written report of those findings.*

**Sec. 7.** *The commission may:*

**1.** *Review all the information upon which an appraisal is based.*

**2.** *Examine any person who conducted the appraisal.*

3. *Order that an independent appraisal be conducted.*
4. *Receive information from the property owner concerning his objection to the appraisal.*
5. *Make use of any information which would be useful in arriving at an appraisal of the property.*
6. *Adopt reasonable regulations necessary for the commission to carry out its functions.*

**Sec. 8.** 1. *The commission may hold hearings and conduct investigations and may take evidence on any matter submitted to it for arbitration. The member of the commission presiding at the hearing may administer oaths and issue subpoenas to compel the attendance of witnesses and the production of books and papers. The presiding member shall sign any such subpoena.*

2. *If any person fails to comply with a subpoena issued pursuant to subsection 1 within 10 days after its issuance, the presiding member of the commission may petition the district court for an order of the court compelling compliance with the subpoena.*

3. *Upon receipt of such a petition, the court shall enter an order directing the person subpoenaed to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than 10 days after the date of the order, and then and there show cause why he has not complied with the*

*subpena. A certified copy of the order must be served upon the person subpenaed.*

*4. If it appears to the court that the subpena was regularly issued by the commission, the court shall enter an order compelling compliance with the subpena and, upon failure to obey the order, the person shall be dealt with as for contempt of court.*

*Sec. 9. 1. If the commission is unable to reach a consensus which is accepted by the parties, it shall certify that it cannot resolve the dispute. The department may thereafter file an action in eminent domain.*

*2. Any finding of the commission regarding property which is the subject of an action in eminent domain may be used as evidence in the legal action.*

*Sec. 10. The findings of the commission made pursuant to sections 6 and 9 of this act are public records.*

*Sec. 11. This act applies to any appraisal after July 1, 1987, of land to be acquired for highway purposes.*