

AMENDED IN ASSEMBLY JUNE 9, 1999  
AMENDED IN ASSEMBLY MAY 17, 1999  
AMENDED IN SENATE APRIL 14, 1999

**SENATE BILL**

**No. 634**

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**Introduced by Senator Kelley**

February 24, 1999

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An act to amend Sections 1250.410 and 1258.220 of the Code of Civil Procedure, and to amend Section 822 of the Evidence Code, relating to eminent domain.

LEGISLATIVE COUNSEL'S DIGEST

SB 634, as amended, Kelley. Eminent domain.

~~(1) Existing law specifies the time period within which various documents must be exchanged in eminent domain proceedings absent an agreement thereto. It also specifies the time period in which the plaintiff must file its final offer of compensation and in which the defendant must file its final demand for compensation.~~

This bill would revise these time periods, as specified.

~~(2) Existing law renders inadmissible as evidence, and prohibits as a basis for an opinion as to the value of property, in an eminent domain or inverse condemnation proceeding, the price or other terms and circumstances of an acquisition of property or a property interest if the acquisition was for a public use for which the property could have been taken by eminent domain. Existing law exempts from this provision the price or other terms and circumstances of an acquisition of property appropriated to a public use or a property interest~~

~~so appropriated if the acquisition was for the same public use for which the property could have been taken by eminent domain.~~

~~This bill would provide that the above described exemption applies to the price or other terms and circumstances of an acquisition of property that at the time of acquisition was already appropriated to a public use or a property interest so appropriated if the acquisition was for the same public use for which the property was already appropriated. It would also define “property appropriated to public use” as specified.~~

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  
4 trial on issues relating to compensation, the plaintiff shall  
5 file with the court and serve on the defendant its final  
6 offer of compensation in the proceeding and the  
7 defendant shall file and serve on the plaintiff its final  
8 demand for compensation in the proceeding. Such offers  
9 and demands shall be the only offers and demands  
10 considered by the court in determining the entitlement,  
11 if any, to litigation expenses. Service shall be in the  
12 manner prescribed by Chapter 5 (commencing with  
13 Section 1010) of Title 14 of Part 2.

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

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



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

5 SEC. 2. Section 1258.220 of the Code of Civil  
6 Procedure is amended to read:

7 1258.220. For the purposes of this article, the “date of  
8 exchange” is the date agreed to for the exchange of their  
9 lists of expert witnesses and statements of valuation data  
10 by the party who served a demand and the party on  
11 whom the demand was served or, failing such agreement,  
12 a date 60 days prior to commencement of the trial on the  
13 issue of compensation or the date set by the court on  
14 noticed motion of either party establishing good cause  
15 therefor.

16 ~~SEC. 3. Section 822 of the Evidence Code is amended~~  
17 ~~to read:~~

18 ~~822. (a) In an eminent domain or inverse~~  
19 ~~condemnation proceeding, notwithstanding the~~  
20 ~~provisions of Sections 814 to 821, inclusive, the following~~  
21 ~~matter is inadmissible as evidence and shall not be taken~~  
22 ~~into account as a basis for an opinion as to the value of~~  
23 ~~property:~~

24 ~~(1) The price or other terms and circumstances of an~~  
25 ~~acquisition of property or a property interest if the~~  
26 ~~acquisition was for a public use for which the property~~  
27 ~~could have been taken by eminent domain. The price or~~  
28 ~~other terms and circumstances of an acquisition of~~  
29 ~~property that at the time of acquisition was already~~  
30 ~~appropriated to a public use or a property interest so~~  
31 ~~appropriated shall not be excluded under this section if~~  
32 ~~the acquisition was for the same public use for which the~~  
33 ~~property was already appropriated. As used in this~~  
34 ~~paragraph, “property appropriated to public use” means~~  
35 ~~property either already in use for a public purpose or set~~  
36 ~~aside for a specific public purpose with the intention of~~  
37 ~~using it for that purpose within a reasonable time.~~

38 ~~(2) The price at which an offer or option to purchase~~  
39 ~~or lease the property or property interest being valued or~~  
40 ~~any other property was made, or the price at which such~~



1 ~~property or interest was optioned, offered, or listed for~~  
2 ~~sale or lease, except that an option, offer, or listing may be~~  
3 ~~introduced by a party as an admission of another party to~~  
4 ~~the proceeding; but nothing in this subdivision permits an~~  
5 ~~admission to be used as direct evidence upon any matter~~  
6 ~~that may be shown only by opinion evidence under~~  
7 ~~Section 813.~~

8 ~~(3) The value of any property or property interest as~~  
9 ~~assessed for taxation purposes or the amount of taxes~~  
10 ~~which may be due on the property, but nothing in this~~  
11 ~~subdivision prohibits the consideration of actual or~~  
12 ~~estimated taxes for the purpose of determining the~~  
13 ~~reasonable net rental value attributable to the property~~  
14 ~~or property interest being valued.~~

15 ~~(4) An opinion as to the value of any property or~~  
16 ~~property interest other than that being valued.~~

17 ~~(5) The influence upon the value of the property or~~  
18 ~~property interest being valued of any noncompensable~~  
19 ~~items of value, damage, or injury.~~

20 ~~(6) The capitalized value of the income or rental from~~  
21 ~~any property or property interest other than that being~~  
22 ~~valued.~~

23 ~~(b) In an action other than an eminent domain or~~  
24 ~~inverse condemnation proceeding, the matters listed in~~  
25 ~~subdivision (a) are not admissible as evidence, and may~~  
26 ~~not be taken into account as a basis for an opinion as to the~~  
27 ~~value of property, except to the extent permitted under~~  
28 ~~the rules of law otherwise applicable.~~

