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HOUSE BILL 2855

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State of Washington

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By Representatives Eickmeyer, Chase, Clibborn, Morrell, Blake, Ormsby, Dunshee, O'Brien, Upthegrove, Moeller, Appleton, Hudgins, Wallace, Kilmer and Green

Read first time 01/16/2006. Referred to Committee on Judiciary.

1 AN ACT Relating to defining just compensation for eminent domain  
2 proceedings; and amending RCW 8.04.092, 8.08.040, and 8.12.030.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 8.04.092 and 1983 c 140 s 1 are each amended to read  
5 as follows:

6 (1) The amount paid into court shall constitute just compensation  
7 paid for the taking of such property(~~(+ PROVIDED, That)~~). However,  
8 the respondents may, in the same action, request a trial for the  
9 purpose of assessing the amount of compensation to be made and the  
10 amount of damages arising from the taking. At the trial, the date of  
11 valuation of the property shall be the date of entry of the order  
12 granting to the state immediate possession and use of the property.  
13 If, pursuant to such hearing, the verdict of the jury, unless a jury is  
14 waived by all parties, or decision of the court, awards respondents an  
15 amount in excess of the tender, the court shall order the excess paid  
16 to respondents with interest thereon from the time of the entry of the  
17 order of immediate possession, and shall charge the costs of the action  
18 to the state. If, pursuant to the trial, the verdict of the jury or  
19 decision of the court awards respondents an amount equal to the tender,

1 the costs of the action shall be charged to the state, and if the  
2 verdict or decision awards an amount less than the amount of the  
3 tender, the state shall be taxed for costs and the state, if  
4 respondents have accepted the tender and withdrawn the amount paid into  
5 court, shall be entitled to a judgment for the difference; otherwise,  
6 the excess on deposit shall be returned to the state.

7 (2) If the final order of condemnation specifies that all or some  
8 of the appropriated property is to be sold or transferred by the state  
9 to a private party, or all or some of the appropriated property is  
10 later sold or transferred by the state to a private party within five  
11 years of the entry of the final condemnation order, then the respondent  
12 property owner is entitled to compensation in the amount of not less  
13 than one hundred thirty-five percent of the fair market value of any  
14 land, building, structure, or other property sold or transferred to the  
15 private party, as well as any other damages to which the respondent may  
16 be entitled. The calculation of fair market value shall be determined  
17 by reference to the fair market value of the property at the time of  
18 the entry of the final order of condemnation.

19 (a) For a period of five years following the entry of the final  
20 condemnation order, if the state proposes to sell or transfer all or  
21 some of the appropriated property to a private party, then the state  
22 must provide the original property owner with notice of such proposed  
23 sale or transfer not less than one hundred twenty days prior to the  
24 sale or transfer. Upon or before the completion of such sale or  
25 transfer, the state shall pay to the original property owner any  
26 additional compensation required under this subsection.

27 (b) The original property owner may petition the court for relief  
28 in order to enforce the rights conferred under this subsection  
29 regarding compensation due for proposed sales or transfers of  
30 appropriated property occurring subsequent to the entry of the final  
31 condemnation order. The prevailing party in any such action shall be  
32 entitled to reimbursement of costs and attorneys' fees by the other  
33 party.

34 **Sec. 2.** RCW 8.08.040 and 2000 c 68 s 1 are each amended to read as  
35 follows:

36 (1) At the time and place appointed for hearing said petition, or  
37 to which the same may have been adjourned, if the court or judge

1 thereof shall have satisfactory proof that all parties interested in  
2 the land, real estate, premises or other property described in said  
3 petition have been duly served with said notice as prescribed herein,  
4 and shall be further satisfied by competent proof that the contemplated  
5 use for which the lands, real estate, premises, or other property  
6 sought to be appropriated is a public use of the county, the court or  
7 judge thereof may make and enter an order adjudicating that the  
8 contemplated use is really a public use of the county, and which order  
9 shall be final unless review thereof to the supreme court or the court  
10 of appeals be taken within five days after entry of such order,  
11 adjudicating that the contemplated use for which the lands, real  
12 estate, premises or other property sought to be appropriated is really  
13 a public use of the county, and directing that determination be had of  
14 the compensation and damages to be paid all parties interested in the  
15 land, real estate, premises, or other property sought to be  
16 appropriated for the taking and appropriation thereof, together with  
17 the injury, if any, caused by such taking or appropriation to the  
18 remainder of the lands, real estate, premises, or other property from  
19 which the same is to be taken and appropriated, after offsetting  
20 against any and all such compensation and damages, special benefits, if  
21 any, accruing to such remainder by reason of such appropriation and use  
22 by the county of such lands, real estate, premises, and other property  
23 described in the petition; such determination to be made by a jury,  
24 unless waived, in which event the compensation or damages shall be  
25 determined by the court without a jury. Proceedings under this chapter  
26 shall have precedence over all cases in court except criminal cases.

27 (2) If the final order of condemnation specifies that all or some  
28 of the appropriated property is to be sold or transferred by the county  
29 to a private party, or all or some of the appropriated property is  
30 later sold or transferred by the county to a private party within five  
31 years of the entry of the final condemnation order, then the respondent  
32 property owner is entitled to compensation in the amount of not less  
33 than one hundred thirty-five percent of the fair market value of any  
34 land, building, structure, or other property sold or transferred to the  
35 private party, as well as any other damages to which the respondent may  
36 be entitled. The calculation of fair market value shall be determined  
37 by reference to the fair market value of the property at the time of  
38 the entry of the final order of condemnation.

1       (a) For a period of five years following the entry of the final  
2 condemnation order, if the county proposes to sell or transfer all or  
3 some of the appropriated property to a private party, then the county  
4 must provide the original property owner with notice of such proposed  
5 sale or transfer not less than one hundred twenty days prior to the  
6 sale or transfer. Upon or before the completion of such sale or  
7 transfer, the county shall pay to the original property owner any  
8 additional compensation required under this subsection.

9       (b) The original property owner may petition the court for relief  
10 in order to enforce the rights conferred under this subsection  
11 regarding compensation due for proposed sales or transfers of  
12 appropriated property occurring subsequent to the entry of the final  
13 condemnation order. The prevailing party in any such action shall be  
14 entitled to reimbursement of costs and attorneys' fees by the other  
15 party.

16       **Sec. 3.** RCW 8.12.030 and 1915 c 154 s 1 are each amended to read  
17 as follows:

18       (1) Every city and town and each unclassified city and town within  
19 the state of Washington, is hereby authorized and empowered to condemn  
20 land and property, including state, county and school lands and  
21 property for streets, avenues, alleys, highways, bridges, approaches,  
22 culverts, drains, ditches, public squares, public markets, city and  
23 town halls, jails and other public buildings, and for the opening and  
24 widening, widening and extending, altering and straightening of any  
25 street, avenue, alley or highway, and to damage any land or other  
26 property for any such purpose or for the purpose of making changes in  
27 the grade of any street, avenue, alley or highway, or for the  
28 construction of slopes or retaining walls for cuts and fills upon real  
29 property abutting on any street, avenue, alley or highway now ordered  
30 to be, or such as shall hereafter be ordered to be opened, extended,  
31 altered, straightened or graded, or for the purpose of draining swamps,  
32 marshes, tidelands, tide flats or ponds, or filling the same, within  
33 the limits of such city, and to condemn land or property, or to damage  
34 the same, either within or without the limits of such city for public  
35 parks, drives and boulevards, hospitals, pesthouses, drains and sewers,  
36 garbage crematories and destructors and dumping grounds for the  
37 destruction, deposit or burial of dead animals, manure, dung, rubbish,

1 and other offal, and for aqueducts, reservoirs, pumping stations and  
2 other structures for conveying into and through such city a supply of  
3 fresh water, and for the purpose of protecting such supply of fresh  
4 water from pollution, and to condemn land and other property and damage  
5 the same for such and for any other public use after just compensation  
6 having been first made or paid into court for the owner in the manner  
7 prescribed by this chapter.

8 (2) If the final order of condemnation specifies that all or some  
9 of the appropriated property is to be sold or transferred by the city  
10 or town to a private party, or all or some of the appropriated property  
11 is later sold or transferred by the city or town to a private party  
12 within five years of the entry of the final condemnation order, then  
13 the respondent property owner is entitled to compensation in the amount  
14 of not less than one hundred thirty-five percent of the fair market  
15 value of any land, building, structure, or other property sold or  
16 transferred to the private party, as well as any other damages to which  
17 the respondent may be entitled. The calculation of fair market value  
18 shall be determined by reference to the fair market value of the  
19 property at the time of the entry of the final order of condemnation.

20 (a) For a period of five years following the entry of the final  
21 condemnation order, if the city or town proposes to sell or transfer  
22 all or some of the appropriated property to a private party, then the  
23 city or town must provide the original property owner with notice of  
24 such proposed sale or transfer not less than one hundred twenty days  
25 prior to the sale or transfer. Upon or before the completion of such  
26 sale or transfer, the city or town shall pay to the original property  
27 owner any additional compensation required under this subsection.

28 (b) The original property owner may petition the court for relief  
29 in order to enforce the rights conferred under this subsection  
30 regarding compensation due for proposed sales or transfers of  
31 appropriated property occurring subsequent to the entry of the final  
32 condemnation order. The prevailing party in any such action shall be  
33 entitled to reimbursement of costs and attorneys' fees by the other  
34 party.

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