

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 2/6/07

SPONSOR Wirth LAST UPDATED \_\_\_\_\_ HB 557

SHORT TITLE Eminent Domain Litigation Expenses SB \_\_\_\_\_

ANALYST C.Sanchez

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Office of the Attorney General (AGO)  
 Department of Transportation (DOT)  
 Department of Finance Administration (DFA)

### SUMMARY

#### Synopsis of Bill

HB 557 amends Section 42A-1-25 NMSA 1978 to require a court to award litigation expenses to a condemnee in an eminent domain litigation when

- a. the court finds that the condemner is liable to the condemnee;
- b. the condemnee is awarded compensation and damages against the condemner in a condemnation proceeding in an amount greater than the amount offered in the condemner's petition; or
- c. the court makes an order permitting entry for suitability studies.

### FISCAL IMPLICATIONS

Indeterminate appropriation impact. Costs could be significant for the municipality who loses an eminent domain case.

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the state would be proportional to challenges to the awarding of litigation expenses. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

### **SIGNIFICANT ISSUES**

Current law allows a court to award litigation expenses in a condemnation proceeding if it finds that the condemner entered the property unlawfully in order to conduct suitability studies or failed without just cause to substantially comply with or wrongfully exceeded or abused the authority of an order allowing the conduct of suitability studies; or when the condemner has abandoned the condemnation proceeding; or when the condemnation proceeding has been dismissed for any reason except when a bona fide settlement has been reached; or if there is a final determination that the condemner does not have a right to take the property sought to be acquired in the condemnation proceeding. This bill would expand the circumstances under which a condemnee may be awarded litigation expenses from a condemner.

### **ADMINISTRATIVE IMPLICATIONS**

The change in the law may affect all condemnation cases filed, even if an award was made by a settlement agreement between the parties; this result may be contrary to the intent at Section 42A-1-25 A(2), since settlements usually occur with a judgment entered and an award made by that judgment and no dismissal of the action. A property owner would have no reason to settle at the condemner's offer since their attorney fees would always be paid. Further, a property owner would be able to contest on any basis, any entry for suitability studies under Section 42A-1-8 and receive reimbursement of their attorney fees. This aspect could prolong the development of public projects.

### **OTHER SUBSTANTIVE ISSUES**

House Bill 557 adds three new categories for payment of litigation expenses when one wins an eminent domain case: 1, if the condemner is liable to the condemnee; 2, the condemnee is awarded compensation and damages against the condemner in a condemnation proceeding in an amount greater than the amount offered in the condemner's petition; or 3, the court makes an order permitting entry for suitability studies.

Among the bill's implications are if, under the second new category, the jury awards a mere one cent more than the amount offered by the condemner, the successful litigant will be awarded litigation expenses. Most states set a fixed percentage, such as 125 percent of the amount of the award, to avoid such a scenario.

### **ALTERNATIVES**

Set a fixed percentage of the award, such as 125 percent, to the condemnee who is awarded compensation and damages against the condemner in a condemnation proceeding in an amount greater than the amount offered in the condemner's petition.