

ACT 155

H.B. NO. 2031

A Bill for an Act Relating to Eminent Domain.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 101-12, Hawaii Revised Statutes, is amended to read as follows:

“§101-12 Evidence. In addition to rules of evidence otherwise provided by law, [sections 246-40 and 246-46 shall apply to] in all proceedings brought under this part[.] the valuation claimed by the taxpayer shall be taken into account. The valuation claimed by the taxpayer in any appeal regarding the assessment of real property tax shall be admissible in evidence as an admission of the fair market value of the real property as of the date of assessment irrespective of the fact that the assessed value from which the taxpayer appealed is adjusted to one hundred per cent fair market value; provided that the evidence shall not in any way affect the right of the taxpayer to severance damages, if any, to which the taxpayer may be entitled, and provided further that, if the taxpayer appealing the assessed value of the real property is a person under a contractual obligation to pay the tax assessed against the fee owner, whether such appeal is deemed consented to by the fee owner, the valuation claimed by such person shall not be admissible in evidence in any eminent domain proceeding against the fee owner.”

SECTION 2. Section 101-35, Hawaii Revised Statutes, is amended to read as follows:

“§101-35 Tax official as party; certificates, etc. Whenever an eminent domain proceeding is brought by the State or any county for the purpose of acquiring the fee simple estate in real property neither the director of taxation, county finance director, or any other tax official shall be joined as party respondent merely on account of any lien for state taxes set forth in title 14 or for county real property taxes. The appropriate director or tax official, as the case may be, may intervene in the proceeding as provided by section 101-21. Upon filing the complaint the plaintiff shall furnish a copy thereof to the appropriate director¹ or tax official and shall also furnish the appropriate director or tax official a copy of any amended complaint.”

SECTION 3. Section 101-36, Hawaii Revised Statutes, is amended to read as follows:

“§101-36 Certificate of deposit of moneys in court[,]; notice of lien. If any moneys are paid into court by the plaintiff in the course of an eminent domain proceeding, the plaintiff or its attorney shall certify the fact of the payment to the director of taxation or county finance director, as the case may be, and shall further certify the date when possession of the land on account of which the payment was made was acquired by the plaintiff, or in the event of entry of a final order of

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condemnation without previous possession of the land, shall certify the date of the final order of condemnation. A copy of the certificate shall be filed as part of the record in the case. In the event of a final determination granting the application of any party for the payment to the party of any of the moneys so paid into court, or if a final order of condemnation is entered, then immediately upon receipt of the certificate[,] the appropriate director shall certify to the clerk of the court in which the eminent domain proceeding is pending the amount of state taxes set forth in title 14 or county real property taxes, penalties, and interest constituting a lien upon the land so coming into the possession of the plaintiff, or constituting a lien upon the land which was the subject of the final order of condemnation, as the case may be[, and in]. In computing the amount of the lien the county director of finance shall cause the real property taxes due on the parcel of land or portion of a parcel of land so coming into the possession of the plaintiff or made the subject of the final order of condemnation, to be remitted for the balance of the taxation period or year from and after the date of possession or, in the event of entry of a final order of condemnation without previous possession by the plaintiff, from and after the date on which the final order of condemnation was entered, as the case may be. The county director of finance or other tax official may remit the taxes in the manner provided by this section upon the receipt of the certificate.”

SECTION 4. Section 101-37, Hawaii Revised Statutes, is amended to read as follows:

“**§101-37 Payment of taxes out of deposit.** The amount of the taxes, penalties, and interest so certified shall be paid to the tax official making the certificate by the clerk of the court from the moneys paid into court, and no clerk shall distribute any moneys so paid into court without the consent of the director of taxation[,] or county finance director, as the case may be, unless the certificate has been furnished. The clerk shall apportion the tax lien among the parties entitled to receive the moneys so paid into court in accordance with the direction of the court. Any of the parties may petition the court for determination of the correct amount of taxes, making the appropriate director a party to the proceeding. Upon the conclusion of the proceeding the appropriate director shall make a new certificate in accordance with the final decision upon the matter, and showing additional penalties and interest, if any.”

SECTION 5. Section 101-38, Hawaii Revised Statutes, is amended to read as follows:

“**§101-38 Further certificate of possession.** In the event possession of any land which is the subject of eminent domain proceedings commenced for the acquisition of the fee simple estate in such lands is obtained by the State or any county, whether or not any moneys are paid into court at the time, the plaintiff or its attorney upon the request of any interested person shall certify the date of the possession to the director of taxation[,] or county finance director, as the case may be, and upon receipt of the certificate the appropriate director[,] or appropriate state or comparable county tax collector and other tax official may remit the taxes in the manner provided in section 101-36.”

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved June 13, 1995.)

Note

1. “Director” should not be underscored.