

ASSEMBLY BILL NO. 413—ASSEMBLYMEN HARDY, BEERS,
SETTELMAYER, MARVEL AND STEWART

MARCH 19, 2007

Referred to Committee on Judiciary

SUMMARY—Revises various provisions governing eminent domain. (BDR 3-1289)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in **bolded italics** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to eminent domain; prohibiting the use of eminent domain to acquire property for the purpose of transferring an interest in the property to a private person or entity, except in certain circumstances; revising various provisions relating to eminent domain; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law lists the purposes for which the power of eminent domain may be exercised. (NRS 37.010) In *Kelo v. City of New London*, 125 S.Ct. 2655 (2005), the United States Supreme Court ruled that private property may be acquired by eminent domain and transferred to a private party for the purpose of obtaining the benefits of economic development. Assembly Joint Resolution 3 of the 74th Session of the Nevada Legislature proposes an amendment to the Nevada Constitution concerning eminent domain. This bill enacts into statute the provisions of Assembly Joint Resolution 3.

Section 4 of this bill prohibits, except in certain circumstances, the exercise of eminent domain to acquire property if the entity acquiring the property will transfer any interest in the property to a private person or entity. In addition, **section 4** provides that the entity that is taking the property has the burden of proving that the taking is for a public use.

Existing law allows an entity which is taking property by the exercise of eminent domain to move the court for an order allowing the entity to occupy the property, pending a final judgment in the action. (NRS 37.100) **Section 5** of this bill requires an entity which is taking property by the exercise of eminent domain to provide the owner of the property with all appraisals of the property obtained by the entity before the entity is allowed to occupy the property. Furthermore, **section 5** requires the court to determine at the occupancy hearing whether the taking is for a public use, if the owner of the property that is the subject of the action requests such a determination.



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Sections 2, 6 and 7 of this bill provide for the manner of computing the just compensation owed to the person whose property is taken by the exercise of eminent domain. Section 1 of this bill provides that neither the property owner nor an entity which is taking property by the exercise of eminent domain is liable for the attorney's fees of the other party, except in certain circumstances. Section 9 of this bill provides that the owner of property taken by the exercise of eminent domain, or his successor in interest, has the right to reacquire the property for the price paid by the entity which took the property under certain circumstances.

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

Section 1. Chapter 37 of NRS is hereby amended by adding thereto a new section to read as follows:

Except as otherwise provided in this section, in all actions in eminent domain, neither the entity that is taking property nor the owner of the property is liable for the attorney's fees of the other party. This section does not apply in an inverse condemnation action if the owner of the property that is the subject of the action makes a request for attorney's fees from the other party to the action.

Sec. 2. NRS 37.009 is hereby amended to read as follows:

37.009 As used in this chapter, unless the context otherwise requires:

1. "Date of valuation" means the date on which the value of the property actually taken, and the damages, if any, to the remaining property, must be determined.

2. "Final judgment" means a judgment which cannot be directly attacked by appeal, motion for new trial or motion to vacate the judgment.

3. "Judgment" means the judgment determining the right to condemn property and fixing the amount of compensation to be paid by the plaintiff.

4. "Partnership" includes a limited partnership.

5. "Person" includes a government, governmental agency or political subdivision of a government.

6. "Value" means the ~~most probable price which a property would bring in a competitive and open market under the conditions of a fair sale, without the price being affected by undue stimulus, whereby the sale is consummated on a specified date and the title to the property is passed from the seller to the buyer under the following conditions:~~

~~(a) The buyer and seller are acting prudently and knowledgeably;~~

~~(b) The buyer and seller are typically motivated;~~



~~—(c) The buyer and seller are well informed or well advised and acting in what they consider are their own best interests;~~

~~—(d) A reasonable time is allowed to expose the property for sale on the open market;~~

~~—(e) Payment is made with United States dollars in cash or pursuant to another financial arrangement comparable thereto; and~~

~~—(f) The sale price represents the normal consideration for the property and is unaffected by special or creative financing or sales concessions granted by any person associated with the sale.]~~ **highest**

price, on the date of valuation, that would be agreed to by a seller, who is willing to sell on the open market and has reasonable time to find a purchaser, and a buyer, who is ready, willing and able to buy, if both the seller and the buyer had full knowledge of all the uses and purposes for which the property is reasonably adaptable and available. In determining value, except as otherwise provided in this subsection, the property sought to be condemned must be valued at its highest and best use without considering any future dedication requirements imposed by the entity that is taking the property. If the property is condemned primarily for a profit-making purpose, the property sought to be condemned must be valued at the use to which the entity that is condemning the property intends to put the property, if such use results in a higher value for the property.

Sec. 3. NRS 37.0095 is hereby amended to read as follows:

37.0095 1. Except as otherwise provided in subsection 2, only a public agency may exercise the power of eminent domain pursuant to the provisions of this chapter.

2. Except as otherwise provided in NRS 37.0097, the power of eminent domain may be exercised by a person who is not a public agency pursuant to NRS 37.230 and ~~subsections 6, 8, 10, 13 and 16~~ **paragraphs (f), (h), (j), (m) and (p) of subsection 1** of NRS 37.010.

3. As used in this section, “public agency” means an agency or political subdivision of this State or the United States.

Sec. 4. NRS 37.010 is hereby amended to read as follows:

37.010 1. Subject to the provisions of this chapter ~~and the limitations in subsections 2 and 3,~~ the right of eminent domain may be exercised in behalf of the following public ~~purposes:~~

~~1.]~~ **uses:**

(a) Federal activities. All public purposes authorized by the Government of the United States.

~~2.]~~ **(b)** State activities. Public buildings and grounds for the use of the State, the Nevada System of Higher Education and all other public purposes authorized by the Legislature.



~~13-1~~ (c) County, city, town and school district activities. Public buildings and grounds for the use of any county, incorporated city or town, or school district, reservoirs, water rights, canals, aqueducts, flumes, ditches or pipes for conducting water for the use of the inhabitants of any county, incorporated city or town, for draining any county, incorporated city or town, for raising the banks of streams, removing obstructions therefrom, and widening, deepening or straightening their channels, for roads, streets and alleys, and all other public purposes for the benefit of any county, incorporated city or town, or the inhabitants thereof.

~~14-1~~ (d) Bridges, toll roads, railroads, street railways and similar uses. Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads, roads for transportation by traction engines or locomotives, roads for logging or lumbering purposes, and railroads and street railways for public transportation.

~~15-1~~ (e) Ditches, canals, aqueducts for smelting, domestic uses, irrigation and reclamation. Reservoirs, dams, water gates, canals, ditches, flumes, tunnels, aqueducts and pipes for supplying persons, mines, mills, smelters or other works for the reduction of ores, with water for domestic and other uses, for irrigating purposes, for draining and reclaiming lands, or for floating logs and lumber on streams not navigable.

~~16-1~~ (f) Mining, smelting and related activities. Mining, smelting and related activities as follows:

~~16-a~~ (1) Mining and related activities, which are recognized as the paramount interest of this State.

~~16-b~~ (2) Roads, railroads, tramways, tunnels, ditches, flumes, pipes, reservoirs, dams, water gates, canals, aqueducts and dumping places to facilitate the milling, smelting or other reduction of ores, the working, reclamation or dewatering of mines, and for all mining purposes, outlets, natural or otherwise, for the deposit or conduct of tailings, refuse, or water from mills, smelters, or other work for the reduction of ores from mines, mill dams, pipelines, tanks or reservoirs for natural gas or oil, an occupancy in common by the owners or possessors of different mines, mills, smelters or other places for the reduction of ores, or any place for the flow, deposit or conduct of tailings or refuse matter and the necessary land upon which to erect smelters and to operate them successfully, including the deposit of fine flue dust, fumes and smoke.

~~17-1~~ (g) Byroads. Byroads leading from highways to residences and farms.

~~18-1~~ (h) Public utilities. Lines for telegraph, telephone, electric light and electric power and sites for plants for electric light and power.



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~~(i)~~ (i) Sewerage. Sewerage of any city, town, settlement of not less than 10 families or any public building belonging to the State or college or university.

~~(j)~~ (j) Water for generation and transmission of electricity. Canals, reservoirs, dams, ditches, flumes, aqueducts and pipes for supplying and storing water for the operation of machinery to generate and transmit electricity for power, light or heat.

~~(k)~~ (k) Cemeteries, public parks. Cemeteries or public parks.

~~(l)~~ (l) Pipelines of beet sugar industry. Pipelines to conduct any liquids connected with the manufacture of beet sugar.

~~(m)~~ (m) Pipelines for petroleum products, natural gas. Pipelines for the transportation of crude petroleum, petroleum products or natural gas, whether interstate or intrastate.

~~(n)~~ (n) Aviation. Airports, facilities for air navigation and aerial rights-of-way.

~~(o)~~ (o) Monorails. Monorails and any other overhead or underground system used for public transportation.

~~(p)~~ (p) Community antenna television companies. Community antenna television companies which have been granted a franchise from the governing body of the jurisdictions in which they provide services. The exercise of the power of eminent domain may include the right to use the wires, conduits, cables or poles of any public utility if:

~~(1)~~ (1) It creates no substantial detriment to the service provided by the utility;

~~(2)~~ (2) It causes no irreparable injury to the utility; and

~~(3)~~ (3) The Public Utilities Commission of Nevada, after giving notice and affording a hearing to all persons affected by the proposed use of the wires, conduits, cables or poles, has found that it is in the public interest.

~~(q)~~ (q) Redevelopment. The acquisition of property pursuant to NRS 279.382 to 279.685, inclusive.

2. Notwithstanding any other provision of law and except as otherwise provided in this subsection, the public uses for which private property may be taken by the exercise of eminent domain do not include the direct or indirect transfer of any interest in the property to another private person or entity. Property taken by the exercise of eminent domain may be transferred to another private person or entity in the following circumstances:

(a) The entity that took the property transfers the property to a private person or entity and the private person or entity uses the property primarily to benefit a public service, including, without limitation, a utility, railroad, public transportation project, pipeline, road, bridge or public facility.



(b) The entity that took the property leases the property to a private person or entity that occupies an incidental part of a public facility and, before leasing the property:

(1) Uses its best efforts to notify the person from whom the property was taken that the property will be leased to a private person or entity that will occupy an incidental part of a public facility; and

(2) Provides the person from whom the property was taken with an opportunity to bid or propose on an equal basis with others.

(c) The entity that took the property:

(1) Took the property in order to acquire property that was abandoned by the owner, abate an immediate threat to the safety of the public or remediate hazardous waste; and

(2) Grants a right of first refusal to the person from whom the property was taken that allows that person to reacquire the property on the same terms and conditions that are offered to the other private person or entity.

(d) The entity that took the property transfers an interest in the property to a private person or entity in exchange for an interest in the property that was taken, or is being taken, by the exercise of eminent domain or under the threat of the exercise of eminent domain for the purpose of a road or highway, the relocation of public or private structures or to facilitate or avoid payment of excessive compensation or damages.

(e) The person from whom the property is taken consents to the taking.

3. The entity that is taking property by the exercise of eminent domain has the burden of proving that the taking is for a public use.

4. For the purposes of this section, an airport authority created by special act of the Legislature or any public airport is not a private person or entity.

Sec. 5. NRS 37.100 is hereby amended to read as follows:

37.100 1. Before the plaintiff obtains possession of the property, the plaintiff shall give to the owner of the property a copy of all appraisals of the property obtained by the plaintiff.

2. The plaintiff may move the court or a judge thereof at any time after the commencement of suit, on notice for such time as the court or judge may direct to the defendant if he is a resident of the county or has appeared in the action, otherwise by serving a notice directed to him on the clerk of the court, for an order permitting the plaintiff to occupy the premises sought to be condemned, pending the entry of judgment, and to do such work thereon as may be



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1 required for the easement, fee, or property rights sought, according
2 to its nature.

3 ~~{2. The}~~

4 **3. At the occupancy hearing, the court shall make a separate**
5 **and distinct determination as to whether the property is being**
6 **taken for a public use pursuant to NRS 37.010, if the defendant**
7 **requests such a determination.**

8 **4. If the defendant does not request a determination pursuant**
9 **to subsection 3 or if the court determines that the property is being**
10 **taken for a public use pursuant to NRS 37.010, the** court or judge
11 shall take proof, by affidavit or otherwise, of the value of the
12 premises sought to be condemned, the damages which will accrue
13 from the condemnation and the reasons for requiring a speedy
14 occupation, and shall grant or refuse the motion according to the
15 equity of the case and the relative damages which may accrue to the
16 parties.

17 ~~{3.}~~ **5.** If the motion is granted, the court or judge shall require
18 the plaintiff to execute and file in court a bond to the defendant,
19 with sureties, to be approved by the court or judge in a penal sum to
20 be fixed by the court or judge, not less than double the value of the
21 premises sought to be condemned and the damages which will ensue
22 from condemnation and occupation, as the value and damages may
23 appear to the court or judge on the hearing, and conditioned to pay
24 the adjudged value of the premises and all damages if the property is
25 condemned, and to pay all damages arising from occupation before
26 judgment if the premises are not condemned, and all costs adjudged
27 to the defendant in the action. The sureties shall justify before the
28 court or judge, after a reasonable notice to the defendant of the time
29 and place of justification.

30 ~~{4.}~~ **6.** In lieu of a bond the plaintiff, with the consent of the
31 court, may deposit with the clerk of the court a sum equal to the
32 value of the premises plus damages, as appraised by the plaintiff.
33 Upon application of the defendant and upon notice to all parties, the
34 court or judge may order the money deposited with the clerk of the
35 court or any part thereof to be paid to the defendant. If the amount
36 of the compensation awarded upon judgment is less than the sum
37 deposited and paid to the defendant, the court shall enter judgment
38 in favor of the plaintiff and against the defendant for the amount of
39 the excess. Application by the defendant to the court for withdrawal
40 of part or all of the money deposited and the payment of that money
41 to the defendant does not prejudice the right of the defendant to
42 contest the amount of compensation to be finally awarded. The
43 receipt by the defendant of a part or all of the money deposited must
44 be conditioned upon the waiver of all defenses except those relating
45 to the amount of compensation.



~~15-1~~ 7. The amount of the penal bond or the deposit is for the purpose of the motion only and is not admissible in evidence on final hearing.

~~16-1~~ 8. The court or judge may also restrain the defendant from hindering or interfering with the occupation of the premises and the doing thereon of the work required for the easement, fee, or property rights.

~~17-1~~ 9. The provisions of this section requiring the execution and filing of a bond do not apply in any action or proceeding in which the State of Nevada is the plaintiff, but the public faith and credit of the State of Nevada, is hereby pledged as security in lieu of the bond. The provisions of this subsection do not prevent the State of Nevada from depositing, in lieu of a pledge of the public faith and credit, with the clerk of the court a sum equal to the value of the premises plus any damages as appraised by the State.

Sec. 6. NRS 37.120 is hereby amended to read as follows:

37.120 1. To assess compensation and damages as provided in NRS 37.110, the date of the first service of the summons is the date of valuation, except that, if the action is not tried within 2 years after the date of the first service of the summons, and the court makes a written finding that the delay is caused primarily by the plaintiff or is caused by congestion or backlog in the calendar of the court, the date of valuation is the date of the actual commencement of the trial. If a new trial is ordered by a court, the date of valuation used in the new trial must be the date of valuation used in the original trial.

2. No improvements put upon the property after the date of the service of the summons may be included in the assessment of compensation or damages, regardless of the date of valuation.

3. *In all actions in eminent domain, the court shall award just compensation to the owner of the property that is being taken. Just compensation is that sum of money necessary to place the property owner in the same position monetarily as if the property had never been taken, excluding any governmental offsets except special benefits. Special benefits may only offset severance damages and may not offset the value for the property. Just compensation for the property taken by the exercise of eminent domain must include interest computed pursuant to NRS 37.175 and reasonable costs and expenses incurred by the owner of the property that is the subject of the action.*

4. As used in this section, "primarily" means the greater amount, quantity or quality of acts of the plaintiff or the defendant or, if there is more than one defendant, the total delay caused by all the defendants, that would cause the date of the trial to be continued past 2 years after the date of the first service of the summons.



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1 **Sec. 7.** NRS 37.175 is hereby amended to read as follows:

2 37.175 1. Except as otherwise provided in this section, the
3 plaintiff shall pay interest on the final judgment ~~{on the difference~~
4 ~~between the amount deposited pursuant to NRS 37.100 or 37.170~~
5 ~~and the sum of the amount awarded for the taking}~~ and any damages
6 awarded for the severance of the property, excluding costs and
7 attorney's fees, from the date ~~{of the first service of the summons}~~
8 *ordered by the district court pursuant to paragraph (a) of*
9 *subsection 2* until the date the judgment is satisfied, at the rate
10 provided in ~~{NRS 17.130.}~~ *paragraph (b) of subsection 2.*

11 2. The ~~{plaintiff is not required to pay interest on any amount~~
12 ~~deposited pursuant to the provisions of NRS 37.100 or 37.170.~~

13 ~~—3.— No interest is required to be paid for the period from the date~~
14 ~~of a trial which is continued past 2 years after the date of the first~~
15 ~~service of the summons, until the date of entry of judgment, if the~~
16 ~~continuance was caused primarily by the defendant or, if there is~~
17 ~~more than one defendant, the total delay caused by all the~~
18 ~~defendants. As used in this subsection, "primarily" means the~~
19 ~~greater amount, quantity or quality of acts of the plaintiff or~~
20 ~~the defendant or, if there is more than one defendant, the total delay~~
21 ~~caused by all defendants, that would cause the trial to be continued~~
22 ~~past 2 years after the date of the first service of the summons.}~~ *court*
23 *in which the action is pending shall determine, in a posttrial*
24 *hearing, the award of interest and award as interest the amount of*
25 *money which will put the person from whom the property is taken*
26 *in as good a position monetarily as if the property had not been*
27 *taken. The district court shall enter an order concerning:*

28 (a) *The date on which the computation of interest will*
29 *commence;*

30 (b) *The rate of interest to be used to compute the award of*
31 *interest, which must not be less than the prime rate of interest plus*
32 *2 percent; and*

33 (c) *Whether the interest will be compounded annually.*

34 **Sec. 8.** NRS 37.260 is hereby amended to read as follows:

35 37.260 1. ~~{Any}~~ *Except as otherwise provided in NRS*
36 *37.270, any* real property, interest therein or improvement thereon
37 which has been acquired in accordance with the provisions of this
38 chapter or purchased under the threat of eminent domain
39 proceedings by an association, commission, corporation, partnership
40 or political subdivision other than a county or incorporated city may
41 be disposed of as surplus by that entity only in accordance with the
42 provisions of this section.

43 2. The governing body of the entity desiring to dispose of the
44 property *pursuant to this section* must first adopt a resolution



1 declaring that the property is no longer required for the purposes for
2 which it was acquired or for other reasonable public use.

3 3. The property, interest or improvement *disposed of pursuant*
4 *to this section* must be sold by the entity to the highest bidder
5 bidding for the property, either at public auction or by sealed bids,
6 the notice and terms of which must be published in a newspaper of
7 general circulation in the county where the property is situated at
8 least once not less than 15 nor more than 45 days before the sale.
9 When, in the opinion of the governing body of the entity, the
10 property cannot be sold by means of public auction or sealed bids
11 without working an undue hardship upon a property owner either as
12 a result of a severance of that owner's property or a denial of access
13 to a public street or highway, the governing body may first offer the
14 property to that owner at a price determined by the governing body
15 to be in the best interest of the corporation, partnership, association,
16 commission or political subdivision.

17 4. ~~It~~ *If property is disposed of pursuant to this section, it* is
18 conclusively presumed in favor of any purchaser for value and
19 without notice of any such real property, interest therein or
20 improvement thereon conveyed pursuant to this section that the
21 entity disposing of it acted within its lawful authority in acquiring
22 and disposing of the property, and that the officers thereof acted
23 within their lawful authority in executing any conveyance vesting
24 title in the purchaser. All such conveyances must be quitclaim in
25 nature and must not carry any warranty of title.

26 **Sec. 9.** NRS 37.270 is hereby amended to read as follows:

27 37.270 Notwithstanding any other provision of law, ~~if the~~
28 ~~State of Nevada, any political subdivision of the State or other~~
29 ~~governmental entity that has acquired~~ property *taken* pursuant to
30 the provisions of this chapter ~~it~~ *must be offered to and reverts to*
31 *the person from whom the property was taken upon repayment of*
32 *the original purchase price if, within 15 years after obtaining*
33 *possession of the property, the entity that took the property:*

34 1. Fails to use the property for the public ~~purpose for which it~~
35 ~~was acquired; and~~ *use for which the property was taken or for any*
36 *public use reasonably related to the public use for which the*
37 *property was taken; or*

38 2. Seeks to convey the right, title or interest in all or part of that
39 property to any person ~~it~~

40 ~~within 15 years after the property is acquired, the person from~~
41 ~~whom the property was acquired or his successor in interest must be~~
42 ~~granted the right of first refusal to purchase the right, title or interest~~
43 ~~in the property sought to be conveyed for fair market value which~~
44 ~~shall be deemed to be an amount which does not exceed the~~
45 ~~proportional amount paid by the State, political subdivision or other~~



~~governmental entity for the acquisition of the property.] and the conveyance is not occurring pursuant to subsection 2 of NRS 37.010.~~

↪ The entity that has taken the property does not fail to use the property under subsection 1 if the entity has begun active planning for or design of the public use, the assembling of land in furtherance of planning for or design of the public use or construction related to the public use.

Sec. 10. NRS 279.471 is hereby amended to read as follows:

279.471 1. Except as otherwise provided in this subsection, an agency may exercise the power of eminent domain to acquire property for a redevelopment project only if the agency adopts a resolution that includes a written finding by the agency that a condition of blight exists for each individual parcel of property to be acquired by eminent domain. An agency may exercise the power of eminent domain to acquire a parcel of property that is not blighted for a redevelopment project if the agency adopts a resolution that includes a written finding by the agency that a condition of blight exists for at least two-thirds of the property within the redevelopment area at the time the redevelopment area was created.

2. In addition to the requirement set forth in subsection 1, an agency may exercise the power of eminent domain to acquire property for a redevelopment project only if:

(a) The property sought to be acquired is necessary to carry out the redevelopment plan;

(b) The agency has adopted a resolution of necessity that complies with the requirements set forth in subsection 3; and

(c) The agency has complied with the provisions of NRS 279.4712.

3. A resolution of necessity required pursuant to paragraph (b) of subsection 2 must set forth:

(a) A statement that the property will be acquired for purposes of redevelopment as authorized pursuant to ~~subsection 17~~ *paragraph (q) of subsection 1* of NRS 37.010 and subsection 2 of NRS 279.470;

(b) A reasonably detailed description of the property to be acquired;

(c) A finding by the agency that the public interest and necessity require the acquisition of the property;

(d) A finding by the agency that acquisition of the property will be the option for redevelopment that is most compatible with the greatest public good and the least private injury; and

(e) A finding by the agency that acquisition of the property is necessary for purposes of redevelopment.



1 4. After an agency adopts a resolution pursuant to subsection 1
2 or 2, the resolution so adopted and the findings set forth in the
3 resolution are final and conclusive and are not subject to judicial
4 review unless credible evidence is adduced to suggest that the
5 resolution or the findings set forth therein were procured through
6 bribery or fraud.

7 **Sec. 11.** NRS 37.112 and 37.190 are hereby repealed.

8 **Sec. 12.** The amendatory provisions of this act apply to an
9 action in eminent domain that is filed on or after October 1, 2007.

TEXT OF REPEALED SECTIONS

37.112 Valuation of property subject to condemnation as result of public work or project.

1. Except as otherwise provided in subsection 2, if the property is subject to condemnation as a result of a public work or public improvement, any decrease or increase in the fair market value of the property before the date of valuation which is caused by:

(a) The public work or public improvement for which the property is acquired; or

(b) The likelihood that the property would be acquired for such a purpose,

↪ must be disregarded when assessing the value of the property pursuant to NRS 37.110.

2. Any decrease or increase in the fair market value of the property before the date of valuation resulting from physical deterioration within the reasonable control of the owner is not required to be disregarded pursuant to subsection 1.

37.190 Costs: Allowance and apportionment. Costs may be allowed or not, and if allowed may include a maximum of \$350 for appraisal reports used at the trial and \$150 for fees of expert witnesses who testify at the trial, and may be apportioned between the parties on the same or adverse sides, in the discretion of the court.

