

**43-4-506. Powers of the authority - inclusion or exclusion of property - determination of public highway alignment.**

(1) In addition to any other powers granted to the authority pursuant to this part 5, the authority has the following powers:

- (a) To have perpetual existence, except as otherwise provided in the contract;
- (b) To sue and be sued;
- (c) To enter into contracts and agreements affecting the affairs of the authority;
- (d) To establish, collect, and, from time to time, increase or decrease fees, tolls, rates, and charges for the privilege of traveling on any public highway financed, constructed, operated, or maintained by the authority, without any supervision or regulation of such fees tolls, rates, and charges by any board, agency, bureau, commission, or official;
- (e) To pledge all or any portion of the revenues to the payment of bonds of the authority;
- (f) To construct, finance, operate, or maintain public highways within or without the boundaries of the authority; except that:
  - (I) The authority shall not construct public highways in any territory located outside the boundaries of the authority and within the boundaries of a municipality without the consent of the governing body of such municipality or within the unincorporated boundaries of a county without the consent of the governing body of such county; and
  - (II) (A) Upon completion, no public highway of more than three lanes shall have at-grade intersections unless the authority is constructing a public highway to use or connect to existing at-grade infrastructure, the governing body of the municipality, county, or entity that owns the at-grade infrastructure has approved the use of the existing at-grade infrastructure as a part of the public three-lane highway, and the authority and the Colorado department of transportation have executed an intergovernmental agreement that specifies the circumstances under which the construction of an above-grade or below-grade intersection is required and the entity responsible for payment of construction costs to build such intersection.
  - (B) If the authority is connecting with the at-grade infrastructure of the Colorado department of transportation, the Colorado department of transportation shall be required to give the approval required by sub-subparagraph (A) of this subparagraph (II).
- (g) To purchase, trade, exchange, acquire, buy, sell, lease, lease with an option to purchase, dispose of, and encumber real or personal property and any interest therein, including easements and rights-of-way, without restriction or limitation by other statutory or charter provisions;
- (h) (I) To have and exercise the power of eminent domain in the manner provided by law for the condemnation of private property for public use and to take any private property necessary to exercise the powers granted in this part 5, either within or without the boundaries of the authority; except that the authority shall not exercise the power of eminent domain with respect to property located outside the boundaries of the authority and within the boundaries of a municipality without the consent of the

governing body of such municipality or within the unincorporated boundaries of a county without the consent of the governing body of such county.

(II) To the extent applicable, in addition to any compensation awarded the owner in an eminent domain proceeding pursuant to the requirements of subparagraph (I) of this paragraph (h), and any benefits that may be due the owner pursuant to article [56](#) of title [24](#), C.R.S., the authority shall additionally reimburse the owner whose property is being acquired or condemned by such authority the following:

(A) An amount representing the reasonable costs of relocating the individuals, families, and business concerns that will be displaced by such authority, including, without limitation, moving expenses and actual direct losses of property resulting from the displacement. In the case of an owner that is a business concern, such amount shall also cover expenses incurred in connection with the reestablishment of such concern, including, without limitation, expenses incurred in connection with the construction of replacement facilities or utility, water, or sewer connections, as well as lost profits that are reasonably related to relocation of the business resulting from the displacement for which reimbursement or compensation is not otherwise made; and

(B) In connection with proceedings for the authority's acquisition or condemnation of property pursuant to this part 5 in which the final value of the property as determined by the court exceeds ten thousand dollars, the court shall award the owner all of such owner's reasonable attorney fees and the reasonable costs of the litigation incurred by such owner where the award by the court in such proceedings equals or exceeds one hundred thirty percent of the last written offer given to the property owner prior to the filing of the condemnation action. For purposes of this sub-subparagraph (B), the reasonable costs of litigation shall include, but not be limited to, those items includable as costs in accordance with section [13-16-122](#), C.R.S.

(i) To accept real or personal property for the use of the authority and to accept gifts and conveyances upon such terms and conditions as the board may approve;

(j) To establish, and from time to time increase or decrease, a highway expansion fee and collect such fee from persons who own property located within the boundaries of the authority who apply for a building permit for improvements on such property, which permit is issued in accordance with applicable ordinances, resolutions, or regulations of any county or municipality. After such fees have been established by the authority, no building permit shall be issued by any county or municipality for any improvement constructed within the boundaries of the authority until such fees have been paid to the authority.

(k) To impose an annual motor vehicle registration fee of not more than ten dollars for each motor vehicle registered with the county clerk and recorder of the county by persons residing in all or any designated portion of the members of the combination. Such registration fee shall be in addition to any fee or tax imposed by the state or any other governmental unit. If a motor vehicle is registered in a county which is a member of more than one authority, the total of all fees imposed pursuant to this paragraph (k) for any such motor vehicle shall not exceed ten dollars. Such fee shall be collected by the county clerk and recorder of the county in which the registration fee is imposed and remitted to the authority. The authority shall apply such registration fees solely to the financing, construction, operation, or maintenance of public highways.

(l) to (n) Repealed.

(o) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted by this part 5. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this part 5.

(2) A public highway authority shall not accept or expend federal funds unless such federal funds are in excess of federal funds for the fiscal year commencing July 1, 1987, or unless such federal funds are specifically authorized, allocated, or made available by the federal government, and unless such acceptance or expenditure is consistent with section [43-1-113](#) (13).

(3) (a) The board may include property within or exclude property from the boundaries of the authority in the manner provided in this subsection (3). Property may not be included within the boundaries of the authority unless it is within the boundaries of the members of the combination, is contiguous to property within the boundaries of the authority at the time of the inclusion, and is not more than two and one-half miles from the proposed center line of the public highway as described in the contract required by section [43-4-504](#) (2).

(b) Prior to any inclusion or exclusion of property, the board shall cause notice of the proposed inclusion or exclusion to be published in a newspaper of general circulation within the boundaries of the authority and cause such notice to be mailed to the division, to the transportation commission, and to the owners of property to be included or excluded at the last known address described for such owners in the real estate records of the county in which such property is located. Such notice shall describe the property to be included within or excluded from the boundaries of the authority, shall specify the date, time, and place at which the board shall hold a public hearing on the proposed inclusion or exclusion, and shall state that persons having objections to the inclusion or exclusion may appear at such hearing to object to the proposed inclusion or exclusion. The date of such public hearing contained in such notice shall be not less than twenty days after the mailing and publication of the notice. The board at the time and place designated in the notice or at such times and places to which the hearing may be adjourned shall hear all objections to the proposed inclusion or exclusion. The board, upon the affirmative vote of two-thirds of the members of the board, may adopt a resolution including or excluding all or any portion of the property described in the notice. Upon the adoption of such resolution, such property shall be included within or excluded from the boundaries of the authority as set forth in the resolution. Such resolution may be adopted by the board without amending the contract required by section [43-4-504](#) (2). The resolution shall be filed with the director of the division, who shall cause such resolution to be recorded in the real estate records of each county that has territory included in the boundaries of the authority.

(c) All property excluded from the authority shall thereafter be subject to the revenue-raising powers of the authority only to the extent that such powers have been exercised by the authority against such property prior to the exclusion and to the extent required to comply with agreements with the holders of bonds outstanding at the time of the exclusion. All property included within the authority shall thereafter be subject to the revenue-raising powers of the authority. In no way will this section affect or increase property taxes in the affected territory or jurisdiction.

(4) The board, upon the affirmative vote of two-thirds of the members of the board, may determine the location of the alignment of the public highway, subject only to any limitation existing pursuant to paragraph (f) of subsection (1) of this section.

**Source:** **L. 87:** Entire part added, p. 1847, § 1, effective August 27. **L. 91:** (2) amended, p. 1134, § 219, effective July 1. **L. 93:** (3) and (4) added, p. 960, § 1, effective June 1. **L. 96:** (1)(l), (1)(m), and (1)(n) repealed, p. 36, § 3, effective March 18. **L. 2000:** (1)(h) amended, p. 1717, § 1, effective June 1; (1)(f) amended, p. 472, § 2, effective August 2. **L. 2002:** (1)(h)(II)(B) amended, p. 952, § 2, effective June 1.

**Editor's note:** Section 2 of chapter 351, Session Laws of Colorado 2000, provides that the act amending subsection (1)(h) applies to any proceeding involving the acquisition or condemnation of property by a public highway authority through the exercise of its eminent domain powers commenced on or after June 1, 2000, and to any proceeding for the acquisition or condemnation of property by a public highway authority commenced before June 1, 2000, for which there has been neither a final adjudication of the parties' rights with respect to such

property nor a final settlement of all claims as of June 1, 2000.

**Cross references:** For the legislative declaration contained in the 2002 act amending subsection (1)(h)(II)(B), see section 1 of chapter 253, Session Laws of Colorado 2002.

#### ANNOTATION

**Where the condemning agency amended its petition in condemnation** to take a smaller parcel of property than originally sought, the trial court properly prorated the amount of the last written offer based on its calculation of the per-acre value of the parcel. E-470 Pub. Hwy. Auth. v. Wagner, 77 P.3d 902 (Colo. App. 2003).

**Plain meaning of subsection (1)(h)(II)(B) requires last written offer to be made prior to the filing of a condemnation action.** Accordingly, landowners were entitled to all attorney fees incurred in connection with condemnation proceedings when their compensation award exceeded 130% of the last written offer made before a highway authority filed its initial petition for condemnation even though the award did not similarly exceed a subsequent written offer made in connection with the filing of an amended petition. E-470 Pub. Hwy. Auth. v. Kortum Inv. Co., 121 P.3d 331 (Colo. App. 2005).

**While subsection (1)(h)(II)(B) does not explicitly authorize attorney fees and costs incurred in challenging the constitutionality of a condemnation statute, neither does it explicitly prohibit them.** Indeed, the subsection and its legislative history are silent on the subject. E-470 Pub. Hwy. Auth. v. Revenig, 140 P.3d 227 (Colo. App. 2006).

**Court rejects any rule of categorical inclusion or exclusion of fees and costs under subsection (1)(h)(II)(B).** Instead, matter must be resolved based on trial court's responsibility under the statute to award "reasonable attorney fees and costs". Subsection (1)(h)(II)(B) speaks in terms of awarding "reasonable" attorney fees and costs. Court interprets term "reasonable" as encompassing an assessment whether fees and costs were "reasonably necessary" to achieve the result contemplated by the statute. E-470 Pub. Hwy. Auth. v. Revenig, 140 P.3d 227 (Colo. App. 2006).

**No abuse of court's discretion in refusing to award landowner's fees and costs incurred in undertaking second appeal.** Trial court properly considered whether attorney fees and costs incurred in second appeal were reasonably necessary to achieve result required by subsection (1)(h)(II)(B), namely, an award of just compensation exceeding 130% of the amount last offered by highway authority. Here, after remand from first appeal, it was clear that landowners had achieved result contemplated by subsection (1)(h)(II)(B). Landowners then raised for first time constitutionality of statutory provision reducing compensation award by amount of special benefits added to landowner's remaining property from condemnation, seeking monetary damages which the supreme court subsequently determined were not due to landowners. There was nothing unreasonable, arbitrary, or unfair about trial court's conclusion that landowner's unsuccessful second appeal was not reasonably necessary to the ultimate result they achieved in the case. Landowners not entitled to assume highway authority would have to pay their appellate fees and costs no matter how second appeal came out. E-470 Pub. Hwy. Auth. v. Revenig, 140 P.3d 227 (Colo. App. 2006).