

Senator Pete Suazo proposes to substitute the following bill:

EMINENT DOMAIN VALUATION

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Pete Suazo

AN ACT RELATING TO EMINENT DOMAIN; REQUIRING AGENCIES THAT DISPLACE PROPERTY OWNERS TO REIMBURSE EXPENSES FOR RELOCATION; REQUIRING RELOCATION ASSISTANCE FOR SMALL BUSINESSES AND FAMILY FARMS; PROVIDING FOR DISPUTE RESOLUTION; ALLOWING INDEPENDENT APPRAISAL; PROVIDING THAT APPEALS OF CONSTITUTIONAL TAKINGS ISSUES UNDER LOCAL ORDINANCES ARE OPTIONAL; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

57-12-3, as enacted by Chapter 24, Laws of Utah 1972

57-12-5, as enacted by Chapter 24, Laws of Utah 1972

57-12-7, as enacted by Chapter 24, Laws of Utah 1972

63-90a-4, as enacted by Chapter 91, Laws of Utah 1994

78-34-9, as last amended by Chapter 220, Laws of Utah 1967

ENACTS:

57-12-14, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **57-12-3** is amended to read:

57-12-3. Definitions.

As used in this [act] chapter:

(1) (a) "Agency" means a department, division, agency, commission, board, council, committee, authority, political subdivision, or other instrumentality of the state or of a political

1 subdivision of the state whether one or more.

2 (b) "Agency" includes any private entity acting to acquire or seeking to acquire private
3 property under the power of eminent domain.

4 [(5)] (2) "Business" means any lawful activity, excepting a farm operation, conducted
5 primarily:

6 (a) for the purchase, sale, lease, or rental of personal or real property, and for the
7 manufacture, processing, or marketing of products, commodities, or any other personal property;

8 (b) for the sale of services to the public;

9 (c) by a nonprofit organization; or

10 (d) for assisting in the purchase, sale, resale, manufacture, processing, or marketing of
11 products, commodities, personal property, or services by the erection and maintenance of an
12 outdoor advertising display or displays, whether or not such display or displays are located on the
13 premises on which any of the above activities are conducted.

14 (3) "Displaced person" means any person who, after the effective date of this act, moves
15 from real property, or who moves his personal property from real property, or moves or
16 discontinues his business or moves his dwelling as a result of the acquisition of the real property,
17 in whole or in part, or as a result of a written order of the acquiring agency to vacate real property
18 for a program of purchase undertaken by an agency or as a direct result of code enforcement
19 activities or a program of rehabilitation of buildings conducted pursuant to a federal or state
20 assisted program.

21 (4) "Family farm" means a farm operation which is conducted § :

22a (a) § on two sections (1280

22 acres) or less § [·] § ; OR

22a (b) AS A SOLE PROPRIETORSHIP OR THROUGH AN ENTITY WHICH IS WHOLLY OWNED BY
22b MEMBERS OF THE SAME IMMEDIATE FAMILY. §

23 [(6)] (5) "Farm operation" means any activity conducted solely or primarily for the
24 production of one or more agricultural products or commodities, including timber, for sale or home
25 use, and customarily producing such products or commodities in sufficient quantity to be capable
26 of contributing materially to the operator's support.

27 [(4)] (6) "Non-profit organization" means all corporations, societies, and associations
28 whose object is not pecuniary profit, but is to promote the general interest and welfare of the
29 members, whether temporal, social, or spiritual.

30 [~~(2)~~] (7) "Person" means any individual, partnership, corporation, or association.

31 (8) "Small business" means a business which has a gross annual income of less than

1 \$1,500,000.

2 Section 2. Section **57-12-5** is amended to read:

3 **57-12-5. Reimbursement of owner for expenses.**

4 Any agency acquiring real property for its use shall as soon as practicable after the date
5 of payment of the purchase price or the date of deposit into court of funds to satisfy the award of
6 compensation in a condemnation proceeding to acquire real property, whichever is the earlier,
7 reimburse the owner~~[, to the extent the agency deems fair and reasonable,]~~ for expenses the owner
8 necessarily incurred for:

9 (1) recording fees, transfer taxes, and similar expenses incidental to conveying the real
10 property to the agency;

11 (2) penalty costs for prepayment for any preexisting recorded mortgage entered into in
12 good faith encumbering the real property; ~~[and]~~

13 (3) the pro rata portion of real property taxes paid which are allocable to a period
14 subsequent to the date of vesting title in the agency, or the effective date of possession of such real
15 property by the agency, whichever is the earlier~~[,];~~ and

16 (4) relocation costs.

17 Section 3. Section **57-12-7** is amended to read:

18 **57-12-7. Replacement property.**

19 (1) No person shall be required to move or be relocated from land used ~~[as]~~ for his
20 residence and acquired under any of the condemnation or eminent domain laws of this state until
21 he has been offered a comparable replacement dwelling, including the curtilage, which is a decent,
22 safe, clean, and sanitary dwelling, including the curtilage, adequate to accommodate ~~[this person,]~~
23 the occupants, available on the private market, and reasonably accessible to public services and
24 places of employment~~[, and available on the private market].~~

25 (2) If a program or project cannot proceed to actual construction because comparable sale
26 or rental housing is not available~~[, and the head of the agency determines that this housing]~~ and
27 cannot otherwise be made available, ~~[he may take]~~ such action shall be taken as is necessary or
28 appropriate to provide this housing by use of funds authorized for the project.

29 (3) No person shall be required to move from his dwelling, including the curtilage, after
30 the effective date of this act~~[, on account]~~ because of any project of the agency, unless ~~[the agency~~
31 head is satisfied that] replacement housing is available to ~~[this person], and provided to the~~

1 property owner.

2 (4) The agency shall assist owners of small businesses and family farms in identifying
3 replacement properties available on the private market, located within the jurisdiction of the
4 agency.

5 Section 4. Section **57-12-14** is enacted to read:

6 **57-12-14. Dispute resolution -- Additional appraisal.**

7 (1) If the agency and the private property owner or displaced person disagree on any issue
8 arising out of this chapter, the private property owner may submit the dispute for mediation or
9 arbitration according to the procedures and requirements of Section 63-34-13.

10 (2) (a) The private property owner or displaced person may request that the mediator or
11 arbitrator authorize an additional appraisal.

12 (b) If the mediator or arbitrator determines that an additional appraisal is reasonably
13 necessary to reach a resolution of the case, the mediator or arbitrator may:

14 (i) have an additional appraisal of the property prepared by an independent appraiser; and

15 (ii) require the agency to pay the costs of the **§ FIRST** § additional appraisal.

16 Section 5. Section **63-90a-4** is amended to read:

17 **63-90a-4. Appeals of decisions.**

18 (1) Each political subdivision shall enact an ordinance that:

19 (a) establishes a procedure for review of actions that may have constitutional taking issues;

20 and

21 (b) meets the requirements of this section.

22 (2) (a) (i) Any owner of private property whose interest in the property is subject to a
23 physical taking or exaction by a political subdivision may appeal the political subdivision's
24 decision within 30 days after the decision is made.

25 ~~[(3)]~~ (ii) The legislative body of the political subdivision, or an individual or body
26 designated by them, shall hear and approve or reject the appeal within 14 days after it is submitted.

27 ~~[(4)]~~ (iii) If the legislative body of the political subdivision fails to hear and decide the
28 appeal within 14 days, the decision is presumed to be approved.

29 (b) The private property owner need not file the appeal authorized by this section before
30 bringing an action in any court to adjudicate claims that are eligible for appeal.

31 (c) A property owner's failure to appeal the action of a political subdivision does not

1 constitute, and may not be interpreted as constituting, a failure to exhaust available administrative
2 remedies or as a bar to bringing legal action.

3 Section 6. Section **78-34-9** is amended to read:

4 **78-34-9. Occupancy of premises pending action -- Deposit paid into court --**
5 **Procedure for payment of compensation.**

6 The plaintiff may move the court or a judge thereof, at any time after the commencement
7 of suit, on notice to the defendant, if he is a resident of the state, or has appeared by attorney in the
8 action, otherwise by serving a notice directed to him on the clerk of the court, for an order
9 permitting the plaintiff to occupy the premises sought to be condemned pending the action,
10 including appeal, and to do such work thereon as may be required. The court or a judge thereof
11 shall take proof by affidavit or otherwise of the value of the premises sought to be condemned and
12 of the damages which will accrue from the condemnation, and of the reasons for requiring a speedy
13 occupation, and shall grant or refuse the motion according to the equity of the case and the relative
14 damages which may accrue to the parties. If the motion is granted, the court or judge shall enter
15 its order requiring the plaintiff as a condition precedent to occupancy to file with the clerk of the
16 court a sum [~~equivalent to at least 75% of~~] equal to the condemning authority's appraised
17 valuation of the property sought to be condemned. The amount thus fixed shall be for the purposes
18 of the motion only, and shall not be admissible in evidence on final hearing. The rights of just
19 compensation for the land so taken or damaged shall vest in the parties entitled thereto, and said
20 compensation shall be ascertained and awarded as provided in Section 78-34-10 and established
21 by judgment therein, and the said judgment shall include, as part of the just compensation
22 awarded, interest at the rate of 8% per annum on the amount finally awarded as the value of the
23 property and damages, from the date of taking actual possession thereof by the plaintiff or order
24 of occupancy, whichever is earlier, to the date of judgment; but interest shall not be allowed on
25 so much thereof as shall have been paid into court. Upon the application of the parties in interest,
26 the court shall order that the money deposited in the court be paid forthwith for or on account of
27 the just compensation to be awarded in the proceeding. A payment to a defendant as aforesaid shall
28 be held to be an abandonment by such defendant of all defenses excepting his claim for greater
29 compensation. If the compensation finally awarded in respect of such lands, or any parcel thereof,
30 shall exceed the amount of the money so received the court shall enter judgment against the
31 plaintiff for the amount of the deficiency. If the amount of money so received by the defendant is

1 greater than the amount finally awarded, the court shall enter judgment against the defendant for
2 the amount of the excess. Upon the filing of the petition for immediate occupancy the court shall
3 fix the time within which, and the terms upon which, the parties in possession shall be required
4 to surrender possession to the plaintiff. The court shall make such orders in respect to
5 encumbrances, liens, rents, assessments, insurance and other charges, if any, as shall be just and
6 equitable.