

EMINENT DOMAIN VALUATION

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Pete Suazo

AN ACT RELATING TO EMINENT DOMAIN; REQUIRING AGENCIES THAT DISPLACE
LANDOWNERS TO REIMBURSE AGREED UPON REASONABLE EXPENSES;
PROVIDING ADDITIONAL EXPENSES TO BE COVERED; BROADENING
REPLACEMENT PROVISIONS FROM DWELLING TO PROPERTY; PROVIDING
OWNER MUST BE SATISFIED AND PROVIDED WITH REPLACEMENT PROPERTY;
ALLOWING INDEPENDENT APPRAISAL; REQUIRING MEDIATION IN CERTAIN
CIRCUMSTANCES; 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) "Agency" means a department, division, agency, commission, board, council,
committee, authority, political subdivision, or other instrumentality of the state or of a political
subdivision of the state whether one or more and includes any private entity acting to acquire or

1 seeking to acquire private property under the power of eminent domain.

2 (2) "Person" means any individual, partnership, corporation, or association.

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

10 (4) "Non-profit organization" means all corporations, societies, and associations whose
11 object is not pecuniary profit, but is to promote the general interest and welfare of the members,
12 whether temporal, social, or spiritual.

13 (5) "Business" means any lawful activity, excepting a farm operation, conducted primarily:

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

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

17 (c) by a nonprofit organization; or

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

22 (6) "Small business" means a business which has a gross annual income of less than
23 \$1,500,000.

24 [(6)] (7) "Farm operation" means any activity conducted solely or primarily for the
25 production of one or more agricultural products or commodities, including timber, for sale or home
26 use, and customarily producing such products or commodities in sufficient quantity to be capable
27 of contributing materially to the operator's support.

28 (8) "Family farm" means a farm operation which is conducted on two sections (1280
29 acres) or less.

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

31 **57-12-5. Reimbursement of owner for expenses.**

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

~~[(1)]~~ (a) recording fees, transfer taxes, and similar expenses incidental to conveying the real property to the agency;

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

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

(d) relocation costs; and

(e) an additional appraisal cost if the property owner and the agency disagree on the value of the real property.

(2) The cost of any appraisal required under Subsection (1)(e) shall be borne solely by the agency and shall be performed by an independent appraiser agreed upon by both the property owner and the agency.

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

57-12-7. Replacement property.

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

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

1 of funds authorized for the project.

2 (3) No person shall be required to move from his [dwelling] residence, small business, or
3 family farm after the effective date of this act[, on account] because of any project of the agency,
4 unless the [agency head] owner is satisfied that replacement [housing] property is available to [this
5 person], and provided to the owner.

6 (4) (a) In the event the agency and the property owner disagree on an offer of comparable
7 replacement property, the dispute shall be submitted for mediation to the private property
8 ombudsman created in Section 63-34-13.

9 (b) If after 30 days from the date the dispute is submitted to the private property
10 ombudsman it appears reasonably unlikely that the dispute will be resolved through mediation:

11 (i) the parties may agree to submit the dispute to binding arbitration under the rules and
12 procedures outlined in Title 78, Chapter 31a, Arbitration Act, or such other rules and procedures
13 as agreed upon by the parties; or

14 (ii) an action may be filed by either party in an appropriate district court of this state.

15 (c) If mediation is successful:

16 (i) the ombudsman shall prepare a written settlement agreement to be signed by all parties;
17 and

18 (ii) after the settlement agreement is signed by all parties, an order of occupancy may be
19 issued.

20 (d) In the case of arbitration, the parties shall bear their own costs and attorney's fees, and
21 the fees of the arbitrator shall be shared equally by the parties.

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

23 **57-12-14. Applicable rules.**

24 In order to promote the uniform and fair application of the provisions of this chapter and
25 others related to relocation assistance and real property acquisition practices, the rules adopted by
26 the Utah Department of Transportation for the acquisition of rights-of-way shall apply to all
27 acquisition of real estate by any agency.

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

29 **63-90a-4. Appeals of decisions.**

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

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

1 and

2 (b) meets the requirements of this section.

3 (2) Any owner of private property whose interest in the property is subject to a physical
4 taking or exaction by a political subdivision may appeal the political subdivision's decision within
5 30 days after the decision is made.

6 (3) The legislative body of the political subdivision, or an individual or body designated
7 by them, shall hear and approve or reject the appeal within 14 days after it is submitted.

8 (4) If the legislative body of the political subdivision fails to hear and decide the appeal
9 within 14 days, the decision is presumed to be approved.

10 (5) The appeal allowed by this section is not necessary prior to bringing an action to
11 adjudicate claims that may have been eligible for appeal under this section. Failure to appeal the
12 action of a political subdivision shall not constitute a failure to exhaust available remedies prior
13 to bringing any legal action to challenge the action of the political subdivision.

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

15 **78-34-9. Occupancy of premises pending action -- Deposit paid into court --**
16 **Procedure for payment of compensation.**

17 The plaintiff may move the court or a judge thereof, at any time after the commencement
18 of suit, on notice to the defendant, if he is a resident of the state, or has appeared by attorney in the
19 action, otherwise by serving a notice directed to him on the clerk of the court, for an order
20 permitting the plaintiff to occupy the premises sought to be condemned pending the action,
21 including appeal, and to do such work thereon as may be required. The court or a judge thereof
22 shall take proof by affidavit or otherwise of the value of the premises sought to be condemned and
23 of the damages which will accrue from the condemnation, and of the reasons for requiring a speedy
24 occupation, and shall grant or refuse the motion according to the equity of the case and the relative
25 damages which may accrue to the parties. If the motion is granted, the court or judge shall enter
26 its order requiring the plaintiff as a condition precedent to occupancy to file with the clerk of the
27 court a sum ~~[equivalent to at least 75% of]~~ equal to the condemning authority's appraised
28 valuation of the property sought to be condemned. The amount thus fixed shall be for the purposes
29 of the motion only, and shall not be admissible in evidence on final hearing. The rights of just
30 compensation for the land so taken or damaged shall vest in the parties entitled thereto, and said
31 compensation shall be ascertained and awarded as provided in Section 78-34-10 and established

1 by judgment therein, and the said judgment shall include, as part of the just compensation
2 awarded, interest at the rate of 8% per annum on the amount finally awarded as the value of the
3 property and damages, from the date of taking actual possession thereof by the plaintiff or order
4 of occupancy, whichever is earlier, to the date of judgment; but interest shall not be allowed on
5 so much thereof as shall have been paid into court. Upon the application of the parties in interest,
6 the court shall order that the money deposited in the court be paid forthwith for or on account of
7 the just compensation to be awarded in the proceeding. A payment to a defendant as aforesaid shall
8 be held to be an abandonment by such defendant of all defenses excepting his claim for greater
9 compensation. If the compensation finally awarded in respect of such lands, or any parcel thereof,
10 shall exceed the amount of the money so received the court shall enter judgment against the
11 plaintiff for the amount of the deficiency. If the amount of money so received by the defendant is
12 greater than the amount finally awarded, the court shall enter judgment against the defendant for
13 the amount of the excess. Upon the filing of the petition for immediate occupancy the court shall
14 fix the time within which, and the terms upon which, the parties in possession shall be required
15 to surrender possession to the plaintiff. The court shall make such orders in respect to
16 encumbrances, liens, rents, assessments, insurance and other charges, if any, as shall be just and
17 equitable.

Legislative Review Note**as of 1-19-98 11:31 AM**

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel