

**EMINENT DOMAIN MODIFICATIONS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kirk A. Cullimore**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to eminent domain.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ limits certain negotiation and disclosure requirements in an eminent domain

proceeding to the owner of a fee simple interest in real property; and

- ▶ modifies provisions regarding the valuation of property in certain eminent domain proceedings.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**57-12-13**, as enacted by Laws of Utah 1972, Chapter 24

**78B-6-505**, as last amended by Laws of Utah 2014, Chapter 59

**78B-6-510**, as renumbered and amended by Laws of Utah 2008, Chapter 3

**78B-6-511**, as last amended by Laws of Utah 2018, Chapter 371

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

29 Section 1. Section **57-12-13** is amended to read:

30 **57-12-13. Procedure for acquisition of property.**

31 (1) (a) As used in this section, "fee simple owner" means the owner of a fee simple  
32 interest in real property.

33 (b) "Fee simple owner" does not include a tenant, lienholder, or other claimant of an  
34 interest in real property.

35 (2) Any agency acquiring real property as to which it has the power to acquire under  
36 the eminent domain or condemnation laws of this state shall comply with the following  
37 policies:

38 [~~1~~] (a) Every reasonable effort shall be made to acquire expeditiously real property by  
39 negotiation with the fee simple owner.

40 [~~2~~] (b) Real property shall be appraised before the initiation of negotiations, and the  
41 fee simple owner or his designated representative shall be given an opportunity to accompany  
42 the appraiser during his inspection of the property.

43 [~~3~~] (c) Before the initiation of negotiations for real property, an amount shall be  
44 established which is reasonably believed to be just compensation therefor, measured by an  
45 undivided fee simple interest in the property as a whole, and such amount shall be offered to  
46 the fee simple owner for the property. In no event shall such amount be less than the lowest  
47 approved appraisal of the fair market value of the property. Any decrease or increase of the fair  
48 market value of real property prior to the date of valuation caused by the public improvement  
49 for which such property is acquired or by the likelihood that the property would be acquired for  
50 such improvement, other than that due to physical deterioration within the reasonable control  
51 of the fee simple owner, will be disregarded in determining the compensation for the property.  
52 The owner of the real property to be acquired shall be provided with a written statement of, and  
53 summary of the basis for, the amount established as just compensation. Where appropriate the  
54 just compensation for real property acquired and for damages to remaining real property shall  
55 be separately stated.

56 [~~4~~] (d) No owner shall be required to surrender possession of real property acquired  
57 through federal or federally assisted programs before the agreed purchase price is paid or there  
58 is deposited with a court having jurisdiction of condemnation of such property, in accordance

59 with applicable law, for the benefit of the owner an amount not less than the lowest approved  
 60 appraisal of the fair market value of such property or the amount of the award of compensation  
 61 in the condemnation proceeding of such property.

62 ~~[(5)]~~ (e) The construction or development of a public improvement shall be so  
 63 scheduled that, to the greatest extent practicable, no person lawfully occupying real property  
 64 shall be required to move from a dwelling (assuming a replacement dwelling will be available)  
 65 or to move his business or farm operation without at least 90 days' written notice from the date  
 66 by which such move is required.

67 ~~[(6)]~~ (f) If an owner or tenant is permitted to occupy the real property acquired on a  
 68 rental basis for a short term or for a period subject to termination on short notice, the amount of  
 69 rent required shall not exceed the fair rental value of the property to a short-term occupier.

70 ~~[(7)]~~ (g) In no event shall the time of condemnation be advanced, on negotiations or  
 71 condemnation and the deposit of funds in court for the use of the owner be deferred, or any  
 72 other coercive action be taken to compel an agreement on the price to be paid for the property.

73 ~~[(8)]~~ (h) If an interest in real property is to be acquired by exercise of the power of  
 74 eminent domain, formal condemnation proceedings shall be instituted. The acquiring agency  
 75 shall not intentionally make it necessary for an owner to institute legal proceedings to prove the  
 76 fact of the taking of his real property.

77 ~~[(9)]~~ (i) If the acquisition of only part of the property would leave [its] the fee simple  
 78 owner with an uneconomic remnant, an offer to acquire the entire property shall be made.

79 Section 2. Section **78B-6-505** is amended to read:

80 **78B-6-505. Negotiation and disclosure required before filing an eminent domain**  
 81 **action.**

82 (1) As used in this section, "fee simple owner" means the same as that term is defined  
 83 in Section [57-12-13](#).

84 ~~[(1)]~~ (2) A political subdivision of the state that seeks to acquire property by eminent  
 85 domain or that intends to use eminent domain to acquire property if the property cannot be  
 86 acquired in a voluntary transaction shall:

87 (a) before the governing body, as defined in Subsection [78B-6-504\(2\)\(a\)](#), of the  
 88 political subdivision takes a final vote to approve the filing of an eminent domain action, make  
 89 a reasonable effort to negotiate with the ~~[property]~~ fee simple owner for the purchase of the

90 property; and

91 (b) except as provided in Subsection [~~(4)~~] (5), as early in the negotiation process  
92 described in Subsection [~~(1)~~] (2)(a) as practicable, but no later than 14 days before the day on  
93 which a final vote is taken to approve the filing of an eminent domain action:

94 (i) provide the [property] fee simple owner a complete printed copy of the materials  
95 provided on the Office of the Property Rights Ombudsman website in accordance with Section  
96 13-43-203 regarding the acquisition of property for a public purpose and a property owner's  
97 right to just compensation; and

98 (ii) provide the [property] fee simple owner a written statement in substantially the  
99 following form:

100 "Although this letter is provided as part of an attempt to negotiate with you for the sale  
101 of your property or an interest in your property without using the power of eminent domain,  
102 [name of political subdivision] may use that power if it is not able to acquire the property by  
103 negotiation. Because of that potential, the person negotiating on behalf of the entity is required  
104 to provide the following disclosures to you.

- 105 1. You are entitled to receive just compensation for your property.  
106 2. You are entitled to an opportunity to negotiate with [name of political subdivision]  
107 over the amount of just compensation before any legal action will be filed.

108 a. You are entitled to an explanation of how the compensation offered for your  
109 property was calculated.

110 b. If an appraiser is asked to value your property, you are entitled to accompany the  
111 appraiser during an inspection of the property.

112 3. You are entitled to discuss this case with the attorneys at the Office of the Property  
113 Rights Ombudsman. The office may be reached at [provide the current contact information for  
114 the Office of the Property Rights Ombudsman].

115 4. The Office of the Property Rights Ombudsman is a neutral state office staffed by  
116 attorneys experienced in eminent domain. Their purpose is to assist citizens in understanding  
117 and protecting their property rights. You are entitled to ask questions and request an  
118 explanation of your legal options.

119 5. If you have a dispute with [name of political subdivision] over the amount of just  
120 compensation due to you, you are entitled to request free mediation or arbitration of the dispute

121 from the Office of the Property Rights Ombudsman. As part of mediation or arbitration, you  
122 are entitled to request a free independent valuation of the property.

123 6. Oral representations or promises made during the negotiation process are not  
124 binding upon the entity seeking to acquire the property by eminent domain."

125 ~~[(2)]~~ (3) Except as provided in Subsection ~~[(4)]~~ (5), the entity involved in the  
126 acquisition of property may not bring a legal action to acquire the property under this chapter  
127 until 30 days after the day on which the disclosure and materials required in Subsection ~~[(1)]~~  
128 (2)(b)(ii) are provided to the ~~[property]~~ fee simple owner.

129 ~~[(3)]~~ (4) A person, other than a political subdivision of the state, that seeks to acquire  
130 property by eminent domain or that intends to use eminent domain to acquire property if the  
131 property cannot be acquired in a voluntary transaction shall:

132 (a) before filing an eminent domain action, make a reasonable effort to negotiate with  
133 the property owner for the purchase of the ~~[property]~~ fee simple; and

134 (b) except as provided in Subsection ~~[(4)]~~ (5), as early in the negotiation process  
135 described in Subsection ~~[(3)]~~ (4)(a) as practicable, but no later than 30 days before the day on  
136 which the person files an eminent domain action:

137 (i) provide the ~~[property]~~ fee simple owner a complete printed copy of the materials  
138 provided on the Office of the Property Rights Ombudsman website in accordance with Section  
139 [13-43-203](#) regarding the acquisition of property for a public purpose and a property owner's  
140 right to just compensation; and

141 (ii) provide the ~~[property]~~ fee simple owner a written statement in substantially the  
142 following form:

143 "Although this letter is provided as part of an attempt to negotiate with you for the sale  
144 of your property or an interest in your property without using the power of eminent domain,  
145 [name of entity] may use that power if it is not able to acquire the property by negotiation.  
146 Because of that potential, the person negotiating on behalf of the entity is required to provide  
147 the following disclosures to you.

148 1. You are entitled to receive just compensation for your property.

149 2. You are entitled to an opportunity to negotiate with [name of entity] over the amount  
150 of just compensation before any legal action will be filed.

151 a. You are entitled to an explanation of how the compensation offered for your

152 property was calculated.

153 b. If an appraiser is asked to value your property, you are entitled to accompany the  
154 appraiser during an inspection of the property.

155 3. You are entitled to discuss this case with the attorneys at the Office of the Property  
156 Rights Ombudsman. The office may be reached at [provide the current contact information for  
157 the Office of the Property Rights Ombudsman].

158 4. The Office of the Property Rights Ombudsman is a neutral state office staffed by  
159 attorneys experienced in eminent domain. Their purpose is to assist citizens in understanding  
160 and protecting their property rights. You are entitled to ask questions and request an  
161 explanation of your legal options.

162 5. If you have a dispute with [name of entity] over the amount of just compensation  
163 due to you, you are entitled to request free mediation or arbitration of the dispute from the  
164 Office of the Property Rights Ombudsman. As part of mediation or arbitration, you are entitled  
165 to request a free independent valuation of the property.

166 6. Oral representations or promises made during the negotiation process are not  
167 binding upon the entity seeking to acquire the property by eminent domain."

168 [~~(4)~~] (5) The court may, upon a showing of exigent circumstances and for good cause,  
169 shorten the 14-day period described in Subsection [~~(1)~~] (2)(b) or the 30-day period described in  
170 Subsection [~~(2)~~] (3) or [~~(3)~~] (4)(b).

171 Section 3. Section **78B-6-510** is amended to read:

172 **78B-6-510. Occupancy of premises pending action -- Deposit paid into court --**  
173 **Procedure for payment of compensation.**

174 (1) (a) At any time after the commencement of suit, and after giving notice to the  
175 defendant as provided in the Utah Rules of Civil Procedure, the plaintiff may file a motion with  
176 the court requesting an order permitting the plaintiff to:

177 (i) occupy the premises sought to be condemned pending the action, including appeal;

178 and

179 (ii) to do whatever work on the premises that is required.

180 (b) Except as ordered by the court for good cause shown, a defendant may not be  
181 required to reply to a motion for immediate occupancy before expiration of the time to answer  
182 the complaint.

- 183 (2) The court shall:
- 184 (a) take proof by affidavit or otherwise of:
- 185 (i) the value of the premises sought to be condemned, measured by an undivided fee
- 186 simple interest in the premises as a whole;
- 187 (ii) [~~the~~] any severance damages that will accrue from the condemnation to the
- 188 undivided fee simple interest in the premises as a whole; and
- 189 (iii) the reasons for requiring a speedy occupation; and
- 190 (b) grant or refuse the motion according to the equity of the case and the relative
- 191 damages that may accrue to the parties.
- 192 (3) (a) If the motion is granted, the court shall enter its order requiring that the plaintiff,
- 193 as a condition precedent to occupancy, file with the clerk of the court a sum equal to the
- 194 condemning authority's appraised valuation of the property sought to be condemned as
- 195 described in Subsection (2)(a)(i).
- 196 (b) That amount shall be for the purposes of the motion only and is not admissible in
- 197 evidence on final hearing.
- 198 (4) (a) Upon the filing of the petition for immediate occupancy, the court shall fix the
- 199 time within which, and the terms upon which, the parties in possession are required to
- 200 surrender possession to the plaintiff.
- 201 (b) The court may issue orders governing encumbrances, liens, rents, assessments,
- 202 insurance, and other charges, if any, as required.
- 203 (5) (a) The rights of just compensation for the land taken as authorized by this section
- 204 or damaged as a result of that taking vests in the parties entitled to it.
- 205 (b) That compensation shall be ascertained and awarded as provided in Section
- 206 [78B-6-511](#).
- 207 (c) (i) Except as provided in Subsection (5)(c)(ii), judgment shall include, as part of the
- 208 just compensation awarded, interest at the rate of 8% per annum on the amount finally awarded
- 209 as the value of the property and damages, from the date of taking actual possession of the
- 210 property by the plaintiff or from the date of the order of occupancy, whichever is earlier, to the
- 211 date of judgment.
- 212 (ii) The court may not award interest on the amount of the judgment that was paid into
- 213 court.

214 (6) (a) Upon the application of the parties in interest, the court shall order that the  
215 money deposited in the court be paid before judgment as an advance on the just compensation  
216 to be awarded in the proceeding.

217 (b) This advance payment to a defendant shall be considered to be an abandonment by  
218 the defendant of all defenses except a claim for greater compensation.

219 (c) If the compensation finally awarded exceeds the advance, the court shall enter  
220 judgment against the plaintiff for the amount of the deficiency.

221 (d) If the advance received by the defendant is greater than the amount finally awarded,  
222 the court shall enter judgment against the defendant for the amount of the excess.

223 (7) Arbitration of a dispute under Section 13-43-204 or 78B-6-522 is not a bar or cause  
224 to stay the action for occupancy of premises authorized by this section.

225 Section 4. Section 78B-6-511 is amended to read:

226 **78B-6-511. Compensation and damages -- How assessed.**

227 (1) The court, jury, or referee shall hear any legal evidence offered by any of the parties  
228 to the proceedings, and determine and assess:

229 (a) (i) the value of the property sought to be condemned [~~and~~] as a whole, including all  
230 improvements pertaining to the [realty] property; and

231 (ii) the value of each [~~and every separate estate or~~] separate interest in the property;  
232 [~~and~~]

233 [(iii) ~~if it consists of different parcels, the value of each parcel and of each estate or~~  
234 ~~interest in each shall be separately assessed;]~~

235 (b) if the property sought to be condemned constitutes only a part of a larger parcel, the  
236 damages which will accrue to the portion not sought to be condemned by reason of its  
237 severance from the portion sought to be condemned and the construction of the improvement in  
238 the manner proposed by the plaintiff;

239 (c) if the property, though no part of it is taken, will be damaged by the construction of  
240 the proposed improvement, and the amount of the damages;

241 (d) separately, how much the portion not sought to be condemned, and each estate or  
242 interest in it, will be benefitted, if at all, by the construction of the improvement proposed by  
243 the plaintiff, provided that if the benefit is equal to the damages assessed under Subsection  
244 (1)(b), the owner of the parcel shall be allowed no compensation except the value of the

245 portion taken; but if the benefit is less than the damages assessed, the former shall be deducted  
246 from the latter, and the remainder shall be the only damages allowed in addition to the value of  
247 the portion taken;

248 (e) if the property sought to be condemned consists of water rights or part of a water  
249 delivery system or both, and the taking will cause present or future damage to or impairment of  
250 the water delivery system not being taken, including impairment of the system's carrying  
251 capacity, an amount to compensate for the damage or impairment; and

252 (f) if land on which crops are growing at the time of service of summons is sought to  
253 be condemned, the value that those crops would have had after being harvested, taking into  
254 account the expenses that would have been incurred cultivating and harvesting the crops.

255 (2) In determining the market value of the property before the taking and the market  
256 value of the property after the taking to assess damages in partial takings cases as described in  
257 Subsection (1)(b), the court, jury, or referee:

258 (a) may consider everything a willing buyer and a willing seller would consider in  
259 determining the market value of the property after the taking; and

260 (b) may not consider the assessed value on the property tax assessment for the property  
261 unless the court determines that the assessed value on the property tax assessment constitutes  
262 an admission by a party opponent.