

Senator Kirk A. Cullimore proposes the following substitute bill:

EMINENT DOMAIN MODIFICATIONS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kirk A. Cullimore

House Sponsor: Brady Brammer

LONG TITLE

General Description:

This bill modifies provisions related to eminent domain.

Highlighted Provisions:

This bill:

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



26 **78B-6-511**, as last amended by Laws of Utah 2018, Chapter 371

27

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:

83 (a) (i) "Claimant" means a person who is a record interest holder of real property
 84 sought to be condemned.

85 (ii) "Claimant" does not include:

86 (A) a fee simple owner; or

87 (B) a utility subject to Section [72-6-116](#).

88 (b) "Fee simple owner" means the same as that term is defined in Section [57-12-13](#).

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

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

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

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

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

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

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

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

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

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

119 the Office of the Property Rights Ombudsman].

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

124 5. If you have a dispute with [name of political subdivision] over the amount of just
125 compensation due to you, you are entitled to request free mediation or arbitration of the dispute
126 from the Office of the Property Rights Ombudsman. As part of mediation or arbitration, you
127 are entitled to request a free independent valuation of the property.

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

130 (iii) provide each claimant a written statement in substantially the following form:

131 "1. Your interest in property may be impacted by a public improvement project and
132 you may be entitled to receive just compensation.

133 2. You are entitled to discuss this case with the attorneys at the Office of the Property
134 Rights Ombudsman. The office may be reached at [provide the current contact information for
135 the Office of the Property Rights Ombudsman].

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

140 4. If you have a dispute with [name of entity] over the amount of just compensation
141 due to you, you are entitled to request free mediation or arbitration of the dispute from the
142 Office of the Property Rights Ombudsman. As part of mediation or arbitration, you are entitled
143 to request a free independent valuation of the property.

144 5. Oral representations or promises made during any negotiation are not binding upon
145 the entity seeking to acquire the property by eminent domain."

146 ~~[(2)]~~ (3) Except as provided in Subsection ~~[(4)]~~ (5), the entity involved in the
147 acquisition of property may not bring a legal action to acquire the property under this chapter
148 until 30 days after the day on which the disclosure and materials required in ~~[Subsection (1)]~~
149 Subsections (2)(b)(ii) and (iii) are provided to the [property] fee simple owner and each

150 claimant.

151 [~~(3)~~] (4) A person, other than a political subdivision of the state, that seeks to acquire
152 property by eminent domain or that intends to use eminent domain to acquire property if the
153 property cannot be acquired in a voluntary transaction shall:

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

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

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

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

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

- 170 1. You are entitled to receive just compensation for your property.
- 171 2. You are entitled to an opportunity to negotiate with [name of entity] over the amount
172 of just compensation before any legal action will be filed.
 - 173 a. You are entitled to an explanation of how the compensation offered for your
174 property was calculated.
 - 175 b. If an appraiser is asked to value your property, you are entitled to accompany the
176 appraiser during an inspection of the property.
- 177 3. You are entitled to discuss this case with the attorneys at the Office of the Property
178 Rights Ombudsman. The office may be reached at [provide the current contact information for
179 the Office of the Property Rights Ombudsman].
- 180 4. The Office of the Property Rights Ombudsman is a neutral state office staffed by

181 attorneys experienced in eminent domain. Their purpose is to assist citizens in understanding
182 and protecting their property rights. You are entitled to ask questions and request an
183 explanation of your legal options.

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

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

190 (iii) provide each claimant a written statement in substantially the following form:

191 "1. Your interest in property may be impacted by a public improvement project and
192 you may be entitled to receive just compensation.

193 2. You are entitled to discuss this case with the attorneys at the Office of the Property
194 Rights Ombudsman. The office may be reached at [provide the current contact information for
195 the Office of the Property Rights Ombudsman].

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

200 4. If you have a dispute with [name of entity] over the amount of just compensation
201 due to you, you are entitled to request free mediation or arbitration of the dispute from the
202 Office of the Property Rights Ombudsman. As part of mediation or arbitration, you are entitled
203 to request a free independent valuation of the property.

204 5. Oral representations or promises made during any negotiation are not binding upon
205 the entity seeking to acquire the property by eminent domain."

206 [(4)] (5) The court may, upon a showing of exigent circumstances and for good cause,
207 shorten the 14-day period described in Subsection [(1)] (2)(b) or the 30-day period described in
208 Subsection [(2)] (3) or [(3)] (4)(b).

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

210 **78B-6-510. Occupancy of premises pending action -- Deposit paid into court --**
211 **Procedure for payment of compensation.**

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

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

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

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

221 (2) The court shall:

222 (a) take proof by affidavit or otherwise of:

223 (i) the value of the premises sought to be condemned, measured by an undivided fee
224 simple interest in the premises as a whole;

225 (ii) ~~the~~ any severance damages that will accrue from the condemnation to the
226 undivided fee simple interest in the premises as a whole; and

227 (iii) the reasons for requiring a speedy occupation; and

228 (b) grant or refuse the motion according to the equity of the case and the relative
229 damages that may accrue to the parties.

230 (3) (a) If the motion is granted, the court shall enter its order requiring that the plaintiff,
231 as a condition precedent to occupancy, file with the clerk of the court a sum equal to the
232 condemning authority's appraised valuation of the property sought to be condemned as
233 described in Subsection (2)(a)(i).

234 (b) That amount shall be for the purposes of the motion only and is not admissible in
235 evidence on final hearing.

236 (4) (a) Upon the filing of the petition for immediate occupancy, the court shall fix the
237 time within which, and the terms upon which, the parties in possession are required to
238 surrender possession to the plaintiff.

239 (b) The court may issue orders governing encumbrances, liens, rents, assessments,
240 insurance, and other charges, if any, as required.

241 (5) (a) The rights of just compensation for the land taken as authorized by this section
242 or damaged as a result of that taking vests in the parties entitled to it.

243 (b) That compensation shall be ascertained and awarded as provided in Section
244 78B-6-511.

245 (c) (i) Except as provided in Subsection (5)(c)(ii), judgment shall include, as part of the
246 just compensation awarded, interest at the rate of 8% per annum on the amount finally awarded
247 as the value of the property and damages, from the date of taking actual possession of the
248 property by the plaintiff or from the date of the order of occupancy, whichever is earlier, to the
249 date of judgment.

250 (ii) The court may not award interest on the amount of the judgment that was paid into
251 court.

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

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

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

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

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

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

264 **78B-6-511. Compensation and damages -- How assessed.**

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

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

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

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

273 (b) if the property sought to be condemned constitutes only a part of a larger parcel, the

274 damages which will accrue to the portion not sought to be condemned by reason of its
275 severance from the portion sought to be condemned and the construction of the improvement in
276 the manner proposed by the plaintiff;

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

279 (d) separately, how much the portion not sought to be condemned, and each estate or
280 interest in it, will be benefitted, if at all, by the construction of the improvement proposed by
281 the plaintiff, provided that if the benefit is equal to the damages assessed under Subsection
282 (1)(b), the owner of the parcel shall be allowed no compensation except the value of the
283 portion taken; but if the benefit is less than the damages assessed, the former shall be deducted
284 from the latter, and the remainder shall be the only damages allowed in addition to the value of
285 the portion taken;

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

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

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

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

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