

## SB0205S01 compared with SB0205

~~text~~ shows text that was in SB0205 but was deleted in SB0205S01.

text shows text that was not in SB0205 but was inserted into SB0205S01.

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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: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill modifies provisions related to eminent domain.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ ~~limits~~modifies 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:

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

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

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

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

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

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

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

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

~~(3)~~ (c) Before the initiation of negotiations for real property, an amount shall be established which is reasonably believed to be just compensation therefor, measured by an undivided fee simple interest in the property as a whole, and such amount shall be offered to the fee simple owner for the property. In no event shall such amount be less than the lowest approved appraisal of the fair market value of the property. Any decrease or increase of the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control

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of the fee simple owner, will be disregarded in determining the compensation for the property. The owner of the real property to be acquired shall be provided with a written statement of, and summary of the basis for, the amount established as just compensation. Where appropriate the just compensation for real property acquired and for damages to remaining real property shall be separately stated.

~~[(4)]~~ (d) No owner shall be required to surrender possession of real property acquired through federal or federally assisted programs before the agreed purchase price is paid or there is deposited with a court having jurisdiction of condemnation of such property, in accordance with applicable law, for the benefit of the owner an amount not less than the lowest approved appraisal of the fair market value of such property or the amount of the award of compensation in the condemnation proceeding of such property.

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

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

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

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

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

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

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

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(1) As used in this section ~~(1)~~:

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

(ii) "Claimant" does not include:

(A) a fee simple owner; or

(B) a utility subject to Section 72-6-116.

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

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

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

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

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

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

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

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

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- a. You are entitled to an explanation of how the compensation offered for your property was calculated.
- b. If an appraiser is asked to value your property, you are entitled to accompany the appraiser during an inspection of the property.
3. You are entitled to discuss this case with the attorneys at the Office of the Property Rights Ombudsman. The office may be reached at [provide the current contact information for the Office of the Property Rights Ombudsman].
4. The Office of the Property Rights Ombudsman is a neutral state office staffed by attorneys experienced in eminent domain. Their purpose is to assist citizens in understanding and protecting their property rights. You are entitled to ask questions and request an explanation of your legal options.
5. If you have a dispute with [name of political subdivision] over the amount of just compensation due to you, you are entitled to request free mediation or arbitration of the dispute from the Office of the Property Rights Ombudsman. As part of mediation or arbitration, you are entitled to request a free independent valuation of the property.
6. Oral representations or promises made during the negotiation process are not binding upon the entity seeking to acquire the property by eminent domain."

}; and

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

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

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

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

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

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to request a free independent valuation of the property.

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

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

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

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

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

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

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

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

1. You are entitled to receive just compensation for your property.
2. You are entitled to an opportunity to negotiate with [name of entity] over the amount of just compensation before any legal action will be filed.
  - a. You are entitled to an explanation of how the compensation offered for your

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property was calculated.

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

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

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

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

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

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

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

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

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

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

5. Oral representations or promises made during any negotiation are not binding upon

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the entity seeking to acquire the property by eminent domain."

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

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

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

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

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

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

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

(2) The court shall:

(a) take proof by affidavit or otherwise of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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