

1 **DEPARTMENT OF TRANSPORTATION ADJUDICATION**

2 **PROCESS REVISIONS**

3 2022 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Jacob L. Anderegg**

6 House Sponsor: Kay J. Christofferson

7

8 **LONG TITLE**

9 **General Description:**

10 This bill amends provisions related to Department of Transportation adjudication
11 processes and relocation or acquisition of pole barns as part of right-of-way acquisition.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ requires the Department of Transportation to appoint and cover the costs of an
16 administrative law judge to preside over administrative proceedings in certain
17 circumstances;
- 18 ▶ requires the Department of Transportation to classify certain structures affected by
19 right-of-way acquisition in the manner that benefits the owner;
- 20 ▶ grants rulemaking authority to the Department of Transportation to establish
21 administrative procedures in accordance with relocation assistance; and
- 22 ▶ makes technical changes.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**



28 AMENDS:

29 **57-12-3**, as last amended by Laws of Utah 2004, Chapter 223

30 **57-12-9**, as last amended by Laws of Utah 2008, Chapter 382

31 **57-12-13**, as last amended by Laws of Utah 2020, Chapter 290



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

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

35 **57-12-3. Definitions.**

36 As used in this chapter:

37 (1) "Agency" means:

38 (a) a department, division, agency, commission, board, council, committee, authority,
39 political subdivision, or other instrumentality of the state or of a political subdivision of the
40 state whether one or more; and

41 (b) any other person whose use of the power of eminent domain results in a person
42 becoming a displaced person.

43 (2) "Business" means any lawful activity, excepting a farm operation, conducted
44 primarily:

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

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

49 (c) by a nonprofit organization; or

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

54 (3) "Department of Transportation" means the Department of Transportation created in
55 Section **72-1-201**.

56 [~~(3)~~] (4) "Displaced person" means any person who, after the effective date of this
57 chapter, moves from real property, or who moves the person's personal property from real
58 property, or moves or discontinues the person's business or moves the person's dwelling as a

59 result of the acquisition of the real property, in whole or in part, or as a result of a written order
60 of the acquiring agency to vacate real property for a program of purchase undertaken by an
61 agency or as a direct result of code enforcement activities or a program of rehabilitation of
62 buildings conducted pursuant to a federal or state assisted program.

63 [~~(4)~~] (5) "Family farm" means a farm operation which is conducted:

64 (a) on two sections (1280 acres) or less; or

65 (b) as a sole proprietorship or through an entity which is wholly owned by members of
66 the same immediate family.

67 [~~(5)~~] (6) "Farm operation" means any activity conducted solely or primarily for the
68 production of one or more agricultural products or commodities, including timber, for sale or
69 home use, and customarily producing such products or commodities in sufficient quantity to be
70 capable of contributing materially to the operator's support.

71 [~~(6)~~] (7) "Nonprofit organization" means all corporations, societies, and associations
72 whose object is not pecuniary profit, but is to promote the general interest and welfare of the
73 members, whether temporal, social, or spiritual.

74 [~~(7)~~] (8) "Person" means any individual, partnership, corporation, or association.

75 (9) (a) "Pole barn" means a building or structure used in conjunction with a farm
76 operation that:

77 (i) uses poles as the primary load-bearing structure; and

78 (ii) does not have a foundation.

79 (b) "Pole barn" includes any building or structure that met the definition of a pole barn
80 in Subsection (9)(a) at any time in the five years preceding the proposed acquisition.

81 [~~(8)~~] (10) "Small business" means a business which has a gross annual income of less
82 than \$1,500,000.

83 Section 2. Section **57-12-9** is amended to read:

84 **57-12-9. Rules of displacing agency.**

85 (1) (a) A displacing agency may enact rules to assure that:

86 (i) the payments and assistance authorized by this chapter are administered in a manner
87 that is fair, reasonable, and as uniform as practicable;

88 (ii) a displaced person who makes proper application for a payment authorized by this
89 chapter is paid promptly after a move or, in hardship cases, is paid in advance; and

90 (iii) any person aggrieved by a determination as to eligibility for a payment authorized
91 by this chapter, or the amount of a payment, may have the person's application reviewed by the
92 head of the displacing agency.

93 (b) Each displacing agency that has not adopted rules under Subsection (1)(a) shall
94 comply with the rules promulgated by the Utah Department of Transportation relating to
95 displaced persons in right-of-way acquisitions.

96 (2) Each displacing agency shall comply with the procedures and requirements of Title
97 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings.

98 (3) (a) For a financial assistance claim made by a displaced person under this chapter
99 or 42 U.S.C. Secs. 4601-4655, for which the Department of Transportation is the displacing
100 agency in a circumstance described in Subsection (3)(b), the Department of Transportation
101 shall, in accordance with Title 63G, Chapter 6a, Utah Procurement Code, procure, appoint, and
102 cover the costs of:

103 (i) an administrative law judge to preside over the proceedings; and

104 (ii) a stenographer to record and transcribe any relevant hearing or proceeding.

105 (b) The requirements of Subsection (3)(a) shall apply to any financial assistance claim
106 by a displaced person where:

107 (i) the financial assistance claim is valued at more than \$50,000; or

108 (ii) there is a question of law affecting the denial of a financial assistance claim.

109 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
110 Department of Transportation may make rules to establish administrative procedures in
111 accordance with this part.

112 Section 3. Section **57-12-13** is amended to read:

113 **57-12-13. Procedure for acquisition of property.**

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

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

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

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

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

126 (c) (i) Before the initiation of negotiations for real property, an amount shall be
127 established which is reasonably believed to be just compensation therefor, measured by an
128 undivided interest in the real property being acquired, and such amount shall be offered to the
129 fee simple owner for the property.

130 (ii) In no event shall [~~such amount~~] the amount established as described in Subsection
131 (2)(c)(i) be less than the lowest approved appraisal of the fair market value of the property.

132 (iii) Any decrease or increase of the fair market value of real property prior to the date
133 of valuation caused by the public improvement for which such property is acquired or by the
134 likelihood that the property would be acquired for such improvement, other than that due to
135 physical deterioration within the reasonable control of the fee simple owner, will be
136 disregarded in determining the compensation for the property.

137 (iv) The fee simple owner of the real property to be acquired shall be provided with a
138 written statement of, and summary of the basis for, the amount established as just
139 compensation.

140 (v) Where appropriate the just compensation for real property acquired and for
141 damages to remaining real property shall be separately stated.

142 (vi) If a pole barn is impacted as a result of a real property acquisition under this
143 chapter, the acquiring agency shall:

144 (A) determine whether the fee simple owner would receive greater net proceeds by
145 classifying the pole barn as real property or as personal property; and

146 (B) classify the pole barn in the manner that results in the highest net proceeds to the
147 fee simple owner.

148 (d) No owner shall be required to surrender possession of real property acquired
149 through federal or federally assisted programs before the agreed purchase price is paid or there
150 is deposited with a court having jurisdiction of condemnation of such property, in accordance
151 with applicable law, for the benefit of the owner an amount not less than the lowest approved

152 appraisal of the fair market value of such property or the amount of the award of compensation
153 in the condemnation proceeding of such property.

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

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

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

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

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