

AMENDED IN SENATE MAY 31, 2001
AMENDED IN ASSEMBLY MAY 7, 2001
AMENDED IN ASSEMBLY APRIL 2, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 237

Introduced by Assembly Member Papan

February 13, 2001

An act to amend the heading of Article 6 (commencing with Section 1250.410) of Chapter 5 of Title 7 of Part 3 of, to amend Sections 1250.410, 1255.010, 1255.030, 1258.220, and 1258.260 of, and to add Sections 1250.420, 1250.430, and 1260.040 to, the Code of Civil Procedure, and to amend Section 7267.2 of the Government Code, relating to eminent domain procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 237, as amended, Papan. Eminent domain.

Existing law, the Eminent Domain Law, provides a procedure to exercise the power of eminent domain to acquire property for a public use. It details the rules for the commencement of such a proceeding and for compensation of the owner of the property. Existing law requires, at least 20 days prior to the date of the trial on the issues relating to compensation, for the plaintiff to file with the court and serve on the defendant its final offer of compensation in the proceeding and the defendant to file and serve on the plaintiff its final demand for compensation in the proceeding.

This bill would require the final offer and demand to include all elements of required compensation, including compensation for loss of goodwill, and to indicate whether or not interest and costs are included.

The bill also would provide that the parties may by agreement refer a dispute that is the subject of an eminent domain proceeding for resolution by mediation or binding or nonbinding arbitration, as specified; *and, if a judgment in eminent domain is not more favorable to the moving party following nonbinding arbitration, would require the court to order that party to pay to the other parties, specified nonrefundable costs and fees unless the court finds in writing and on motion that the imposition of costs and fees would create such a substantial economic hardship as not to be in the interest of justice.*

The bill would provide that, upon motion of a party, the court may postpone the date of trial in an eminent domain proceeding for a period that appears adequate to enable resolution of a dispute pursuant to alternative resolution procedures provided that the court is satisfied that certain conditions are met, as specified.

Existing law provides that at any time before entry of the judgment, the plaintiff may deposit with the State Treasury the probable amount of compensation, based on an appraisal, that will be awarded in the proceeding. Existing law requires the plaintiff, prior to making the deposit, to have an expert qualified to express an opinion as to the value of the property make an appraisal of the property and prepare a written statement of, or summary of, the basis for the appraisal.

This bill would require the statement or summary to contain detail sufficient to clearly indicate the basis for the appraisal, including the highest and best use and applicable zoning of the property, the principal transactions, reproduction or replacement cost analysis, or capitalization analysis, supporting the appraisal, and if the appraisal includes compensation for damages to the remainder, the compensation for the property and for damages to the remainder stated separately, and the calculations and a narrative explanation supporting the compensation, including any offsetting benefits.

Existing law requires the court, upon motion, to determine or redetermine whether the amount deposited is the probable amount of compensation that will be awarded.

This bill would specify the information necessary to support that motion.

Existing law defines the “date of exchange” for the purposes of the provisions relating to exchange of valuation data in eminent domain



proceedings, as the date agreed to by the parties for the exchange of their lists of expert witnesses and statements of valuation data by the party who served a demand and the party on whom the demand was served, or, failing agreement, a date 60 days prior to commencement of the trial on the issue of compensation, or the date set by the court on noticed motion of either party establishing good cause therefor.

This bill would provide that failing agreement, the date of exchange is a date 90, rather than 60, days prior to the above specified events, and would provide that unless otherwise agreed to by the parties, the date of exchange shall not be earlier than 9 months after the date of commencement of the proceeding.

Existing law requires the statement of valuation data to provide the name and business or residence address of the witness and to include a statement whether the witness will testify to an opinion, as specified.

This bill would require the method used to determine a loss of good will and a summary of the data supporting the opinion to be included in the exchange of valuation data. Moreover, the bill would provide that either party may move the court for a ruling on a evidentiary or other legal issue affecting the determination of compensation, and would require the motion to be made 60 days before commencement of trial on the issue of compensation. The bill would authorize the court to postpone the date of final offers and demands of the parties and the date of trial for a period sufficient to enable the parties to engage in further proceedings before trial in response to the court's ruling on the motion.

Existing law requires a public entity to establish an amount which it believes to be just compensation for the acquisition of real property and to provide the owner of real property with a written statement of, and summary of the basis for, the amount it established as just compensation. Existing law provides that where the property is owner occupied residential property and contains no more than 4 residential units, the homeowner shall, upon request, be allowed to review a copy of the appraisal upon which the offer is based.

~~This bill would revise the latter provision to make it permissive, rather than mandatory, and would specify the necessary detail required of the written statement and summary, and would provide that the public entity may meet the written statement, summary, and review requirements by providing the property owner with a copy of the appraisal.~~

The provisions of the bill would apply to any proceeding commenced on or after January 1, 2002.



Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The heading of Article 6 (commencing with
2 Section 1250.410) of Chapter 5 of Title 7 of Part 3 of the Code of
3 Civil Procedure is amended to read:

4
5 Article 6. Settlement Offers and Alternative Dispute
6 Resolution
7

8 SEC. 2. Section 1250.410 of the Code of Civil Procedure is
9 amended to read:

10 1250.410. (a) At least 20 days prior to the date of the trial on
11 issues relating to compensation, the plaintiff shall file with the
12 court and serve on the defendant its final offer of compensation in
13 the proceeding and the defendant shall file and serve on the
14 plaintiff its final demand for compensation in the proceeding. The
15 offer and the demand shall include all compensation required
16 pursuant to this title, including compensation for loss of goodwill,
17 if any, and shall state whether interest and costs are included. Such
18 offers and demands shall be the only offers and demands
19 considered by the court in determining the entitlement, if any, to
20 litigation expenses. Service shall be in the manner prescribed by
21 Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

22 (b) If the court, on motion of the defendant made within 30 days
23 after entry of judgment, finds that the offer of the plaintiff was
24 unreasonable and that the demand of the defendant was reasonable
25 viewed in the light of the evidence admitted and the compensation
26 awarded in the proceeding, the costs allowed pursuant to Section
27 1268.710 shall include the defendant’s litigation expenses.

28 In determining the amount of such litigation expenses, the court
29 shall consider the offer required to be made by the plaintiff
30 pursuant to Section 7267.2 of the Government Code and any other
31 written offers and demands filed and served prior to or during the
32 trial.

33 (c) If timely made, the offers and demands as provided in
34 subdivision (a) shall be considered by the court on the issue of
35 determining an entitlement to litigation expenses.



1 SEC. 3. Section 1250.420 is added to the Code of Civil
2 Procedure, to read:

3 1250.420. The parties may by agreement refer a dispute that
4 is the subject of an eminent domain proceeding for resolution by
5 any of the following means:

6 (a) Mediation by a neutral mediator.

7 (b) Binding arbitration by a neutral arbitrator. The arbitration
8 is subject to Chapter 12 (commencing with Section 1273.010).

9 (c) Nonbinding arbitration by a neutral arbitrator. The
10 arbitrator's decision in a nonbinding arbitration is final unless
11 within 30 days after service of the arbitrator's decision a party
12 moves the court for a trial of the eminent domain proceeding. If the
13 judgment in the eminent domain proceeding is not more favorable
14 ~~to the moving party, the moving party shall, notwithstanding any~~
15 ~~other statute, pay the costs and litigation expenses of the parties in~~
16 ~~the eminent domain proceeding.~~ *to the moving party, the court*
17 *shall order that party to pay to the other parties the following*
18 *nonrefundable costs and fees, unless the court finds in writing and*
19 *on motion that the imposition of costs and fees would create such*
20 *a substantial economic hardship as not to be in the interest of*
21 *justice:*

22 *(1) All costs specified in Section 1033.5, limited to those*
23 *incurred from the time of election of the trial de novo. Nothing in*
24 *this subdivision affects the right of a defendant to recover costs*
25 *otherwise allowable pursuant to Section 1268.710, incurred*
26 *before election of a trial de novo, except that a defendant may*
27 *recover the costs of determining the apportionment of the award*
28 *made pursuant to subdivision (b) of Section 1260.220 whenever*
29 *incurred.*

30 *(2) The reasonable costs of the services of expert witnesses who*
31 *are not regular employees of any party, actually incurred and*
32 *reasonably necessary in the preparation or trial of the case, limited*
33 *to those incurred from the time of election of the trial de novo.*

34 *(3) The compensation paid by the parties to the arbitrator.*

35 SEC. 4. Section 1250.430 is added to the Code of Civil
36 Procedure, to read:

37 1250.430. Notwithstanding any other statute or rule of court
38 governing the date of trial of an eminent domain proceeding, on
39 motion of a party the court may postpone the date of trial for a
40 period that appears adequate to enable resolution of a dispute



1 pursuant to alternative resolution procedures, if it is demonstrated
2 to the satisfaction of the court that all of the following conditions
3 are satisfied:

4 (a) The parties are actively engaged in alternative resolution of
5 the dispute pursuant to Section 1250.420.

6 (b) The parties appear to be making progress toward resolution
7 of the dispute without the need for a trial of the matter.

8 (c) The parties agree that additional time for the purpose of
9 alternative dispute resolution is desirable.

10 SEC. 5. Section 1255.010 of the Code of Civil Procedure is
11 amended to read:

12 1255.010. (a) At any time before entry of judgment, the
13 plaintiff may deposit with the State Treasury the probable amount
14 of compensation, based on an appraisal, that will be awarded in the
15 proceeding. The appraisal upon which the deposit is based shall be
16 one that satisfies the requirements of subdivision (b). The deposit
17 may be made whether or not the plaintiff applies for an order for
18 possession or intends to do so.

19 (b) Before making a deposit under this section, the plaintiff
20 shall have an expert qualified to express an opinion as to the value
21 of the property (1) make an appraisal of the property and (2)
22 prepare a written statement of, or summary of the basis for, the
23 appraisal. The statement or summary shall contain detail sufficient
24 to indicate clearly the basis for the appraisal, including, but not
25 limited to, all of the following information:

26 (A) The date of valuation, highest and best use, and applicable
27 zoning of the property.

28 (B) The principal transactions, reproduction or replacement
29 cost analysis, or capitalization analysis, supporting the appraisal.

30 (C) If the appraisal includes compensation for damages to the
31 remainder, the compensation for the property and for damages to
32 the remainder separately stated, and the calculations and a
33 narrative explanation supporting the compensation, including any
34 offsetting benefits.

35 (c) On noticed motion, or upon ex parte application in an
36 emergency, the court may permit the plaintiff to make a deposit
37 without prior compliance with subdivision (b) if the plaintiff
38 presents facts by affidavit showing that (1) good cause exists for
39 permitting an immediate deposit to be made, (2) an adequate
40 appraisal has not been completed and cannot reasonably be



1 prepared before making the deposit, and (3) the amount of the
2 deposit to be made is not less than the probable amount of
3 compensation that the plaintiff, in good faith, estimates will be
4 awarded in the proceeding. In its order, the court shall require that
5 the plaintiff comply with subdivision (b) within a reasonable time,
6 to be specified in the order, and also that any additional amount of
7 compensation shown by the appraisal required by subdivision (b)
8 be deposited within that time.

9 SEC. 6. Section 1255.030 of the Code of Civil Procedure is
10 amended to read:

11 1255.030. (a) At any time after a deposit has been made
12 pursuant to this article, the court shall, upon motion of the plaintiff
13 or of any party having an interest in the property for which the
14 deposit was made, determine or redetermine whether the amount
15 deposited is the probable amount of compensation that will be
16 awarded in the proceeding. The motion shall be supported with
17 detail sufficient to indicate clearly the basis for the motion,
18 including, but not limited to, the following information to the
19 extent relevant to the motion:

20 (1) The date of valuation, highest and best use, and applicable
21 zoning of the property.

22 (2) The principal transactions, reproduction or replacement
23 cost analysis, or capitalization analysis, supporting the motion.

24 (3) The compensation for the property and for damages to the
25 remainder separately stated, and the calculations and a narrative
26 explanation supporting the compensation, including any offsetting
27 benefits.

28 (b) If the plaintiff has not taken possession of the property and
29 the court determines that the probable amount of compensation
30 exceeds the amount deposited, the court may order the plaintiff to
31 increase the deposit or may deny the plaintiff possession of the
32 property until the amount deposited has been increased to the
33 amount specified in the order.

34 (c) If the plaintiff has taken possession of the property and the
35 court determines that the probable amount of compensation
36 exceeds the amount deposited, the court shall order the amount
37 deposited to be increased to the amount determined to be the
38 probable amount of compensation. If the amount on deposit is not
39 increased accordingly within 30 days from the date of the court's
40 order, or such longer time as the court may have allowed at the time



1 of making the order, the defendant may serve on the plaintiff a
 2 notice of election to treat that failure as an abandonment of the
 3 proceeding. If the plaintiff does not cure its failure within 10 days
 4 after receipt of such notice, the court shall, upon motion of the
 5 defendant, enter judgment dismissing the proceeding and
 6 awarding the defendant his or her litigation expenses and damages
 7 as provided in Sections 1268.610 and 1268.620.

8 (d) After any amount deposited pursuant to this article has been
 9 withdrawn by a defendant, the court may not determine or
 10 redetermine the probable amount of compensation to be less than
 11 the total amount already withdrawn. Nothing in this subdivision
 12 precludes the court from making a determination or
 13 redetermination that probable compensation is greater than the
 14 amount withdrawn.

15 (e) If the court determines that the amount deposited exceeds
 16 the probable amount of compensation, it may permit the plaintiff
 17 to withdraw the excess not already withdrawn by the defendant.

18 (f) The plaintiff may at any time increase the amount deposited
 19 without making a motion under this section. In such case, notice
 20 of the increase shall be served as provided in subdivision (a) of
 21 Section 1255.020.

22 SEC. 7. Section 1258.220 of the Code of Civil Procedure is
 23 amended to read:

24 1258.220. (a) For the purposes of this article, the “date of
 25 exchange” is the date agreed to for the exchange of their lists of
 26 expert witnesses and statements of valuation data by the party who
 27 served a demand and the party on whom the demand was served
 28 or, failing agreement, a date 90 days prior to commencement of the
 29 trial on the issue of compensation or the date set by the court on
 30 noticed motion of either party establishing good cause therefor.

31 (b) Unless otherwise agreed to by the parties, the date of
 32 exchange shall not be earlier than nine months after the date of
 33 commencement of the proceeding.

34 SEC. 8. Section 1258.260 of the Code of Civil Procedure is
 35 amended to read:

36 1258.260. (a) The statement of valuation data shall give the
 37 name and business or residence address of the witness and shall
 38 include a statement whether the witness will testify to an opinion
 39 as to any of the matters listed in Section 1258.250 and, as to each
 40 matter upon which the witness will give an opinion, what that



1 opinion is and the following items to the extent that the opinion is
2 based on them:

- 3 (1) The interest being valued.
- 4 (2) The date of valuation used by the witness.
- 5 (3) The highest and best use of the property.
- 6 (4) The applicable zoning and the opinion of the witness as to
7 the probability of any change in zoning.
- 8 (5) The sales, contracts to sell and purchase, and leases
9 supporting the opinion.
- 10 (6) The cost of reproduction or replacement of the existing
11 improvements on the property, the depreciation or obsolescence
12 the improvements have suffered, and the method of calculation
13 used to determine depreciation.
- 14 (7) The gross income from the property, the deductions from
15 gross income, and the resulting net income; the reasonable net
16 rental value attributable to the land and existing improvements,
17 and the estimated gross rental income and deductions upon which
18 the reasonable net rental value is computed; the rate of
19 capitalization used; and the value indicated by the capitalization.
- 20 (8) If the property is a portion of a larger parcel, a description
21 of the larger parcel and its value.
- 22 (9) If the opinion concerns loss of goodwill, the method used
23 to determine the loss, and a summary of the data supporting the
24 opinion.
- 25 (b) With respect to each sale, contract, or lease listed under
26 paragraph (5) of subdivision (a), the statement of valuation data
27 shall give:
 - 28 (1) The names and business or residence addresses, if known,
29 of the parties to the transaction.
 - 30 (2) The location of the property subject to the transaction.
 - 31 (3) The date of the transaction.
 - 32 (4) If recorded, the date of recording and the volume and page
33 or other identification of the record of the transaction.
 - 34 (5) The price and other terms and circumstances of the
35 transaction. In lieu of stating the terms contained in any contract,
36 lease, or other document, the statement may, if the document is
37 available for inspection by the adverse party, state the place where
38 and the times when it is available for inspection.
 - 39 (6) The total area and shape of the property subject to the
40 transaction.



1 (c) If any opinion referred to in Section 1258.250 is based in
2 whole or in substantial part upon the opinion of another person, the
3 statement of valuation data shall include the name and business or
4 residence address of such other person, his business, occupation,
5 or profession, and a statement as to the subject matter to which his
6 or her opinion relates.

7 (d) Except when an appraisal report is used as a statement of
8 valuation data as permitted by subdivision (e), the statement of
9 valuation data shall include a statement, signed by the witness, that
10 the witness has read the statement of valuation data and that it
11 fairly and correctly states his or her opinions and knowledge as to
12 the matters therein stated.

13 (e) An appraisal report that has been prepared by the witness
14 which includes the information required to be included in a
15 statement of valuation data may be used as a statement of valuation
16 data under this article.

17 SEC. 9. Section 1260.040 is added to the Code of Civil
18 Procedure, to read:

19 1260.040. (a) If there is a dispute between plaintiff and
20 defendant over an evidentiary or other legal issue affecting the
21 determination of compensation, either party may move the court
22 for a ruling on the issue. The motion shall be made not later than
23 60 days before commencement of trial on the issue of
24 compensation. The motion shall be heard by the judge assigned for
25 trial of the case.

26 (b) Notwithstanding any other statute or rule of court
27 governing the date of final offers and demands of the parties and
28 the date of trial of an eminent domain proceeding, the court may
29 postpone those dates for a period sufficient to enable the parties to
30 engage in further proceedings before trial in response to its ruling
31 on the motion.

32 (c) This section supplements, and does not replace any other
33 pretrial or trial procedure otherwise available to resolve an
34 evidentiary or other legal issue affecting the determination of
35 compensation.

36 SEC. 10. Section 7267.2 of the Government Code is amended
37 to read:

38 7267.2. (a) Prior to adopting a resolution of necessity
39 pursuant to Section 1245.230 of the Code of Civil Procedure and
40 initiating negotiations for the acquisition of real property, the



1 public entity shall establish an amount which it believes to be just
2 compensation therefor, and shall make an offer to the owner or
3 owners of record to acquire the property for the full amount so
4 established, unless the owner cannot be located with reasonable
5 diligence. The offer may be conditioned upon the legislative
6 body's ratification of the offer by execution of a contract of
7 acquisition or adoption of a resolution of necessity or both. In no
8 event shall the amount be less than the public entity's approved
9 appraisal of the fair market value of the property. Any decrease or
10 increase in the fair market value of real property to be acquired
11 prior to the date of valuation caused by the public improvement for
12 which the property is acquired, or by the likelihood that the
13 property would be acquired for the improvement, other than that
14 due to physical deterioration within the reasonable control of the
15 owner or occupant, shall be disregarded in determining the
16 compensation for the property.

17 (b) The public entity shall provide the owner of real property
18 to be acquired with a written statement of, and summary of the
19 basis for, the amount it established as just compensation. The
20 written statement and summary shall contain detail sufficient to
21 indicate clearly the basis for the offer, including, but not limited
22 to, all of the following information:

23 (1) The date of valuation, highest and best use, and applicable
24 zoning of property.

25 (2) The principal transactions, reproduction or replacement
26 cost analysis, or capitalization analysis, supporting the
27 determination of value.

28 (3) Where appropriate, the just compensation for the real
29 property acquired and for damages to remaining real property shall
30 be separately stated and shall include the calculations and narrative
31 explanation supporting the compensation, including any offsetting
32 benefits.

33 (c) Where the property involved is owner occupied residential
34 property and contains no more than four residential units, the
35 homeowner shall, upon request, be allowed to review a copy of the
36 appraisal upon which the offer is based. The public entity may, but
37 is not required to, satisfy the written statement, summary, and
38 review requirements of this section by providing the owner a copy
39 of the appraisal on which the offer is based.



1 (d) Notwithstanding subdivision (a), a public entity may make
2 an offer to the owner or owners of record to acquire real property
3 for less than an amount which it believes to be just compensation
4 therefor if (1) the real property is offered for sale by the owner at
5 a specified price less than the amount the public entity believes to
6 be just compensation therefor, (2) the public entity offers a price
7 which is equal to the specified price for which the property is being
8 offered by the landowner, and (3) no federal funds are involved in
9 the acquisition, construction, or project development.

10 (e) As used in subdivision (d), “offered for sale” means any of
11 the following:

12 (1) Directly offered by the landowner to the public entity for a
13 specified price in advance of negotiations by the public entity.

14 (2) Offered for sale to the general public at an advertised or
15 published, specified price set no more than six months prior to and
16 still available at the time the public entity initiates contact with the
17 landowner regarding the public entity’s possible acquisition of the
18 property.

19 SEC. 11. This act applies to any proceeding commenced on or
20 after January 1, 2002.

