

Assembly Bill No. 237

CHAPTER 428

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.

[Approved by Governor October 2, 2001. Filed with
Secretary of State October 2, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 237, 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 an 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 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.

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

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

Article 6. Settlement Offers and Alternative Dispute Resolution

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

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

(b) If the court, on motion of the defendant made within 30 days after entry of judgment, finds that the offer of the plaintiff was unreasonable and that the demand of the defendant was reasonable viewed in the light



of the evidence admitted and the compensation awarded in the proceeding, the costs allowed pursuant to Section 1268.710 shall include the defendant's litigation expenses.

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

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

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

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

(a) Mediation by a neutral mediator.

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

(c) Nonbinding arbitration by a neutral arbitrator. The arbitrator's decision in a nonbinding arbitration is final unless within 30 days after service of the arbitrator's decision a party moves the court for a trial of the eminent domain proceeding. If the judgment in the eminent domain proceeding is not more favorable to the moving party, the court shall order that party to pay to the other parties the following 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:

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

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

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

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

1250.430. Notwithstanding any other statute or rule of court governing the date of trial of an eminent domain proceeding, on motion



of a party the court may postpone the date of trial for a period that appears adequate to enable resolution of a dispute pursuant to alternative resolution procedures, if it is demonstrated to the satisfaction of the court that all of the following conditions are satisfied:

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

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

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

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

1255.010. (a) At any time before entry of 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. The appraisal upon which the deposit is based shall be one that satisfies the requirements of subdivision (b). The deposit may be made whether or not the plaintiff applies for an order for possession or intends to do so.

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

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

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

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

(c) On noticed motion, or upon ex parte application in an emergency, the court may permit the plaintiff to make a deposit without prior compliance with subdivision (b) if the plaintiff presents facts by affidavit showing that (1) good cause exists for permitting an immediate deposit to be made, (2) an adequate appraisal has not been completed and cannot reasonably be prepared before making the deposit, and (3) the amount of the deposit to be made is not less than the probable amount of compensation that the plaintiff, in good faith, estimates will be awarded in the proceeding. In its order, the court shall require that the plaintiff



comply with subdivision (b) within a reasonable time, to be specified in the order, and also that any additional amount of compensation shown by the appraisal required by subdivision (b) be deposited within that time.

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

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

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

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

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

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

(c) If the plaintiff has taken possession of the property and the court determines that the probable amount of compensation exceeds the amount deposited, the court shall order the amount deposited to be increased to the amount determined to be the probable amount of compensation. If the amount on deposit is not increased accordingly within 30 days from the date of the court's order, or any longer time as the court may have allowed at the time of making the order, the defendant may serve on the plaintiff a notice of election to treat that failure as an abandonment of the proceeding. If the plaintiff does not cure its failure within 10 days after receipt of such notice, the court shall, upon motion of the defendant, enter judgment dismissing the proceeding and awarding the defendant his or her litigation expenses and damages as provided in Sections 1268.610 and 1268.620.

(d) After any amount deposited pursuant to this article has been withdrawn by a defendant, the court may not determine or redetermine



the probable amount of compensation to be less than the total amount already withdrawn. Nothing in this subdivision precludes the court from making a determination or redetermination that probable compensation is greater than the amount withdrawn.

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

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

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

1258.220. (a) For the purposes of this article, the “date of exchange” is the date agreed to 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 90 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.

(b) Notwithstanding subdivision (a), unless otherwise agreed to by the parties, the date of exchange shall not be earlier than nine months after the date of commencement of the proceeding.

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

1258.260. (a) The statement of valuation data shall give the name and business or residence address of the witness and shall include a statement whether the witness will testify to an opinion as to any of the matters listed in Section 1258.250 and, as to each matter upon which the witness will give an opinion, what that opinion is and the following items to the extent that the opinion is based on them:

- (1) The interest being valued.
- (2) The date of valuation used by the witness.
- (3) The highest and best use of the property.
- (4) The applicable zoning and the opinion of the witness as to the probability of any change in zoning.
- (5) The sales, contracts to sell and purchase, and leases supporting the opinion.
- (6) The cost of reproduction or replacement of the existing improvements on the property, the depreciation or obsolescence the improvements have suffered, and the method of calculation used to determine depreciation.



(7) The gross income from the property, the deductions from gross income, and the resulting net income; the reasonable net rental value attributable to the land and existing improvements, and the estimated gross rental income and deductions upon which the reasonable net rental value is computed; the rate of capitalization used; and the value indicated by the capitalization.

(8) If the property is a portion of a larger parcel, a description of the larger parcel and its value.

(9) If the opinion concerns loss of goodwill, the method used to determine the loss, and a summary of the data supporting the opinion.

(b) With respect to each sale, contract, or lease listed under paragraph (5) of subdivision (a), the statement of valuation data shall give:

(1) The names and business or residence addresses, if known, of the parties to the transaction.

(2) The location of the property subject to the transaction.

(3) The date of the transaction.

(4) If recorded, the date of recording and the volume and page or other identification of the record of the transaction.

(5) The price and other terms and circumstances of the transaction. In lieu of stating the terms contained in any contract, lease, or other document, the statement may, if the document is available for inspection by the adverse party, state the place where and the times when it is available for inspection.

(6) The total area and shape of the property subject to the transaction.

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

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

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

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

1260.040. (a) If there is a dispute between plaintiff and defendant over an evidentiary or other legal issue affecting the determination of compensation, either party may move the court for a ruling on the issue.



The motion shall be made not later than 60 days before commencement of trial on the issue of compensation. The motion shall be heard by the judge assigned for trial of the case.

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

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

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

7267.2. (a) Prior to adopting a resolution of necessity pursuant to Section 1245.230 of the Code of Civil Procedure and initiating negotiations for the acquisition of real property, the public entity shall establish an amount which it believes to be just compensation therefor, and shall make an offer to the owner or owners of record to acquire the property for the full amount so established, unless the owner cannot be located with reasonable diligence. The offer may be conditioned upon the legislative body's ratification of the offer by execution of a contract of acquisition or adoption of a resolution of necessity or both. In no event shall the amount be less than the public entity's approved appraisal of the fair market value of the property. Any decrease or increase in the fair market value of real property to be acquired prior to the date of valuation caused by the public improvement for which the property is acquired, or by the likelihood that the property would be acquired for the improvement, other than that due to physical deterioration within the reasonable control of the owner or occupant, shall be disregarded in determining the compensation for the property.

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

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

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

(3) Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately



stated and shall include the calculations and narrative explanation supporting the compensation, including any offsetting benefits.

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

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

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

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

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

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

