

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, 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 Sections 7267.1 and 7267.2 of the Government Code, relating to eminent domain procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 237, as introduced, 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.

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 on which the appraisal of the property is based, and if the appraisal is based on market data, the principal transactions supporting the appraisal, and if the appraisal includes compensation for damages to the remainder, the calculations and a narrative explanation supporting the compensation, including any offsetting benefits.

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 that is attempting to acquire real property by negotiation to have the property appraised before the initiation of the negotiations, as specified.

This bill would provide that the public entity's appraisal, and any other valuation opinion expressed by or on behalf of a party prepared for the purpose of negotiation, is inadmissible in the trial of the issue of just compensation, as specified.

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 delete the latter provision and would require the public entity to provide a copy of the appraisal on which the offer is based to the owner of real property.

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

1 the proceeding and the defendant shall file and serve on the
2 plaintiff its final demand for compensation in the proceeding. *The*
3 *offer and the demand shall include all compensation required*
4 *pursuant to this title, including compensation for loss of goodwill,*
5 *if any, and shall state whether interest and costs are included.* Such
6 offers and demands shall be the only offers and demands
7 considered by the court in determining the entitlement, if any, to
8 litigation expenses. Service shall be in the manner prescribed by
9 Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

10 (b) If the court, on motion of the defendant made within 30 days
11 after entry of judgment, finds that the offer of the plaintiff was
12 unreasonable and that the demand of the defendant was reasonable
13 viewed in the light of the evidence admitted and the compensation
14 awarded in the proceeding, the costs allowed pursuant to Section
15 1268.710 shall include the defendant's litigation expenses.

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

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

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

26 1250.420. The parties may by agreement refer a dispute that
27 is the subject of an eminent domain proceeding for resolution by
28 any of the following means:

29 (a) Mediation by a neutral mediator.

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

32 (c) Nonbinding arbitration by a neutral arbitrator. The
33 arbitrator's decision in a nonbinding arbitration is final unless
34 within 30 days after the arbitrator's decision a party moves the
35 court for a trial of the eminent domain proceeding. If the judgment
36 in the eminent domain proceeding is not more favorable to the
37 moving party, the moving party shall, notwithstanding any other
38 statute, pay the costs and litigation expenses of the parties in the
39 eminent domain proceeding.

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:*

(1) The highest and best use on which the appraisal of the property is based.

(2) If the appraisal is based on market data, the principal transactions supporting the appraisal.

(3) If the appraisal includes compensation for damages to the remainder, 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

1 without prior compliance with subdivision (b) if the plaintiff
2 presents facts by affidavit showing that (1) good cause exists for
3 permitting an immediate deposit to be made, (2) an adequate
4 appraisal has not been completed and cannot reasonably be
5 prepared before making the deposit, and (3) the amount of the
6 deposit to be made is not less than the probable amount of
7 compensation that the plaintiff, in good faith, estimates will be
8 awarded in the proceeding. In its order, the court shall require that
9 the plaintiff comply with subdivision (b) within a reasonable time,
10 to be specified in the order, and also that any additional amount of
11 compensation shown by the appraisal required by subdivision (b)
12 be deposited within that time.

13 SEC. 6. Section 1258.220 of the Code of Civil Procedure is
14 amended to read:

15 1258.220. (a) For the purposes of this article, the “date of
16 exchange” is the date agreed to for the exchange of their lists of
17 expert witnesses and statements of valuation data by the party who
18 served a demand and the party on whom the demand was served
19 or, failing ~~such~~ agreement, a date ~~—60~~ 90 days prior to
20 commencement of the trial on the issue of compensation or the
21 date set by the court on noticed motion of either party establishing
22 good cause therefor.

23 (b) *Unless otherwise agreed to by the parties, the date of*
24 *exchange shall not be earlier than nine months after the date of*
25 *commencement of the proceeding.*

26 SEC. 7. Section 1258.260 of the Code of Civil Procedure is
27 amended to read:

28 1258.260. (a) The statement of valuation data shall give the
29 name and business or residence address of the witness and shall
30 include a statement whether the witness will testify to an opinion
31 as to any of the matters listed in Section 1258.250 and, as to each
32 ~~such~~ matter upon which ~~he~~ *the witness* will give an opinion, what
33 that opinion is and the following items to the extent that the
34 opinion ~~on such matter~~ is based ~~thereon~~ *on them*:

- 35 (1) The interest being valued.
36 (2) The date of valuation used by the witness.
37 (3) The highest and best use of the property.
38 (4) The applicable zoning and the opinion of the witness as to
39 the probability of any change in ~~such~~ zoning.



1 (5) The sales, contracts to sell and purchase, and leases
2 supporting the opinion.

3 (6) The cost of reproduction or replacement of the existing
4 improvements on the property, the depreciation or obsolescence
5 the improvements have suffered, and the method of calculation
6 used to determine depreciation.

7 (7) The gross income from the property, the deductions from
8 gross income, and the resulting net income; the reasonable net
9 rental value attributable to the land and existing improvements
10 ~~thereon~~, and the estimated gross rental income and deductions
11 ~~therefrom~~ upon which ~~such~~ *the* reasonable net rental value is
12 computed; the rate of capitalization used; and the value indicated
13 by ~~such~~ *the* capitalization.

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

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

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

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

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

25 (3) The date of the transaction.

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

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

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

35 (c) If any opinion referred to in Section 1258.250 is based in
36 whole or in substantial part upon the opinion of another person, the
37 statement of valuation data shall include the name and business or
38 residence address of such other person, his business, occupation,
39 or profession, and a statement as to the subject matter to which his
40 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 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. 8. 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.

SEC. 9. Section 7267.1 of the Government Code is amended to read:

7267.1. (a) The public entity shall make every reasonable effort to acquire expeditiously real property by negotiation.

(b) Real property shall be appraised before the initiation of negotiations, and the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during his or her inspection of the property. However, the public entity may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value.

(c) *The public entity's appraisal, and any other valuation opinion expressed by or on behalf of a party prepared for the purpose of negotiation pursuant to this chapter, is inadmissible in*

1 evidence in the trial of the issue of just compensation to the
2 following extent:

3 (1) The appraisal or other opinion may not be given in evidence
4 or referred to, nor shall the appraisal or other opinion be
5 considered to be an admission of a party.

6 (2) On objection of a party, the person who prepared the
7 appraisal or expressed the opinion on behalf of that party may not
8 be called at trial by an adverse party to give an opinion as to
9 compensation. If the person who prepared the appraisal or
10 expressed the opinion is called at trial to give an opinion as to
11 compensation, the appraisal or other opinion may be used for
12 impeachment of the witness.

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

15 7267.2. (a) Prior to adopting a resolution of necessity
16 pursuant to Section 1245.230 of the Code of Civil Procedure and
17 initiating negotiations for the acquisition of real property, the
18 public entity shall establish an amount which it believes to be just
19 compensation therefor, and shall make an offer to the owner or
20 owners of record to acquire the property for the full amount so
21 established, unless the owner cannot be located with reasonable
22 diligence. The offer may be conditioned upon the legislative
23 body's ratification of the offer by execution of a contract of
24 acquisition or adoption of a resolution of necessity or both. In no
25 event shall the amount be less than the public entity's approved
26 appraisal of the fair market value of the property. Any decrease or
27 increase in the fair market value of real property to be acquired
28 prior to the date of valuation caused by the public improvement for
29 which the property is acquired, or by the likelihood that the
30 property would be acquired for the improvement, other than that
31 due to physical deterioration within the reasonable control of the
32 owner or occupant, shall be disregarded in determining the
33 compensation for the property. The

34 (b) The public entity shall provide the owner of real property
35 to be acquired with a copy of the appraisal on which the offer is
36 based. The appraisal shall also include a written statement of, and
37 summary of the basis for, the amount it established as just
38 compensation. ~~Where the property involved is owner-occupied~~
39 ~~residential property and contains no more than four residential~~
40 ~~units, the homeowner shall, upon request, be allowed to review a~~

~~copy of the appraisal upon which the offer is based.~~ Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

~~(b)~~

(c) 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.

~~(c)~~

(d) As used in subdivision ~~(b)~~(c), “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.