

SENATE BILL 230

By Hensley

AN ACT to amend Tennessee Code Annotated, Title 7, Chapter 31; Title 13, Chapter 20; Title 29, Chapter 17 and Title 29, Chapter 16, relative to eminent domain.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 29, Chapter 17, is amended by adding the following language as a new, appropriately designated part:

29-17-1101. As used in this part:

- (1) "AAA" means the American Arbitration Association;
- (2) "Certified appraiser" means an appraiser certified by this state to appraise property that is the subject of the condemnation proceedings set out in this part;
- (3) "Eminent domain" has the same meaning as defined in § 29-17-102;
- (4) "Local government" means a county or municipality;
- (5) "Original landowner" means any person, including such person's heirs, successors or assigns, with an ownership interest in property at the time such property is taken by a local government by eminent domain proceedings;
- (6) "Person" means a natural person or any legal entity;
- (7) "Property" means real property whether leasehold or in fee simple, any buildings, improvements or structures on real property, any easements, rights and appurtenances belonging to real property, or any combination of the aforementioned;
- (8) "Property owner" means all persons with an ownership interest in the property, including, but not limited to, holders of life estates, mortgages, leases, easements and other interests; and

(9) "Send" or "notice" means mailed by certified mail or hand delivered with a receipt obtained at the time the delivery is made.

29-17-1102.

(a) In conjunction with required notice under § 29-17-104 or § 29-17-903, the local government shall send notice to the property owner that includes:

(1) A statement of value which lists the amount that the local government offers to the property owner as damages. As required by law, such amount is based on an appraisal of the property and has been deposited in court; if

(2) A form describing the following options:

(A) The property owner may accept the amount listed in the statement of value and demand immediate payment;

(B) The property owner may reject the amount listed in the statement of value and proceed to the negotiation process described in § 29-17-1104;

(C) The property owner may reject the amount listed in the statement of value and proceed to the arbitration process described in § 29-17-1105 by sending a signed and dated arbitration initiation form to the local government; provided, that any settlement resulting from the arbitration process shall be final and binding on the parties; or

(D) The property owner may reject the amount listed in the statement of value and proceed in court by filing an answer in accordance with § 29-17-104; provided, that by filing an answer, the property owner shall waive the options described in §§ 29-17-1102(a)(2)(B) and (C);

(3) An arbitration initiation form; and

(4) Information regarding the consequences for not returning the form described in subdivision (a)(2), signed and dated, to the local government within the time periods specified in this part.

(b) If the property owner is unknown, is a nonresident of this state or cannot be found, notice shall be given by publication, as provided by law for similar situations in chancery court.

(c) A local government shall send new notice pursuant to subsection (a) if:

(1) The local government abandons the petition prior to the court rendering a decision on possession of the property; and

(2) The local government later decides to initiate condemnation proceedings against the property pursuant to § 29-17-104.

29-17-1103.

(a) If the property owner fails to send the form described in § 29-17-1102(a)(2), signed and dated, to the local government within thirty (30) days of the date on the form, then the property owner waives the options described in §§ 29-17-1102(a)(2)(B) and (C).

(b) If a local government receives a form from the property owner pursuant to subsection (a), then the local government shall send a copy of such form to the court.

29-17-1104.

(a) A property owner selecting to reject the amount listed in the statement of value and proceeding to the negotiation process shall submit a counter offer, along with the form described in § 29-17-1102(a)(2), to the local government.

(b)

(1) The local government shall send notice to the property owner within thirty (30) days of receiving the property owner's counter offer of the local government's decision to:

(A) Accept the property owner's counter offer;

(B) Reject the property owner's counter offer; or

(C) Reject the property owner's counter offer and make its own counter offer.

(2) If the local government fails to send notice to the property owner within the thirty day-period described in subdivision (b)(1), then the local government shall be deemed to have accepted the counter offer. The local government shall provide notice to the court to disburse the funds to the property owner at no cost to the property owner.

(c) If the local government rejects the property owner's counter offer under subdivision (b)(1)(B) or (C), then the notice shall include an arbitration initiation form.

(d)

(1)

(A) If the local government accepts the property owner's counter offer, affirmatively or by default, and the local government has deposited the amount listed in the statement of value with the court, then the local government shall send notice to the court that shall include:

(i) A copy of the property owner's counter offer;

(ii) A signed and dated form signifying acceptance of the property owner's counter offer; and

(iii) A check, money order or similar document from the local government to the court for any balance owing in excess of the amount already deposited, plus interest or other funds that the property owner is entitled to by law.

(B) The court shall, upon the request of the property owner, disburse the funds to the property owner at no cost to the property owner.

(2) If the local government accepts the property owner's counter offer and the local government has not deposited the amount listed in the statement of value with the court or paid the property owner such amount in bond, then the local government shall send a check, money order or similar document from the local government to the property owner in the full amount listed in the property owner's counter offer, plus interest or other funds that the property owner is entitled to by law. If the local government has paid in bond to the property owner any amount, then such amount shall be deducted from the total amount owing to the property owner.

(e) The property owner shall have thirty (30) days from the date of the notice from the local government described in subsection (b) to respond in a signed and dated written notice.

(f)

(1) If the local government accepts the property owner's counter offer, then the property owner may demand immediate payment.

(2) If the local government rejects the property owner's counter offer, but makes no counter offer of its own, then the property owner may revive the highest offer made by the local government and demand immediate payment of such offer.

(3) If the local government rejects the property owner's counter offer, but makes a counter offer of its own, then the property owner may reject such counter offer and elect:

(i) To revive the highest offer made by the local government and demand immediate payment of such offer;

(ii) To initiate arbitration proceedings in accordance with § 29-17-1105, by sending a completed arbitration initiation form to the local government with the notice of rejection; or

(iii) To proceed in court if permitted by this chapter.

29-17-1105.

(a) Except as provided in subsection (b), the Uniform Arbitration Act, compiled in title 29, chapter 5, part 3, shall apply to arbitrations conducted pursuant to this part.

(b)

(1) The local government shall, within fifteen (15) days of receipt of a signed and dated arbitration initiation form, notify the AAA, and an arbitrator shall be appointed by the AAA within fifteen business (15) days of such notice.

(2) Prior to commencement of arbitration, the property owner shall submit to the arbitrator an appraisal of the property, conducted by a certified appraiser, at the property owner's sole expense.

(3) Arbitration shall commence within sixty (60) days after the appointment of the arbitrator to determine fair market value of the property.

(4) The arbitrator shall appoint a time and place for the hearing and send notice to the parties no less than ten (10) days before the hearing.

(5) The arbitration costs shall be split equally between the property owner and the local government. If multiple property owners are parties to the arbitration, each property owner shall be responsible for an equal share of fifty percent (50%) of the arbitration costs. Each party shall be responsible for the party's own discretionary costs, including, but not limited to, attorney fees.

29-17-1106.

(a) Notwithstanding any law to the contrary, if a local government acquires property by eminent domain, prior to transferring the property to any person, the local government shall first offer the property for purchase to the original landowner at a purchase price equal to the amount the local government paid to the original landowner.

(b) A local government shall provide notice to the original landowner of the right of first refusal described in subsection (a), and shall not transfer the property until:

(1) Receiving written confirmation of the original landowner's decision to not purchase the property; or

(2) The expiration of ninety (90) days.

29-17-1107.

No action by the property owner pursuant to this part shall be deemed questioning or challenging a taking under § 29-17-903(d).

SECTION 2. Tennessee Code Annotated, Title 29, Chapter 17, Part 2, is amended by adding the following language as a new, appropriately designated section:

29-17-204. The determination of valuation for property condemned by counties shall be done in accordance with title 29, chapter 17, part 11.

SECTION 3. Tennessee Code Annotated, Title 29, Chapter 17, Part 3, is amended by adding the following language as a new, appropriately designated section:

29-17-303. Notwithstanding this part, the determination of valuation for property condemned by municipalities shall be done in accordance with title 29, chapter 17, part 11.

SECTION 4. Tennessee Code Annotated, 29-17-801(b), is amended by deleting the language "The payment into court" and by substituting instead the language "Unless contradictory to title 29, chapter 17, part 11, the payment into court".

SECTION 5. This act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to any taking of property by eminent domain by a local government on or after the effective date of this act.