

Senate Bill No. 698

Passed the Senate September 5, 2007

Secretary of the Senate

Passed the Assembly August 30, 2007

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2007, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 1255.410 of the Code of Civil Procedure, and to amend Section 7267.2 of the Government Code, relating to eminent domain.

LEGISLATIVE COUNSEL'S DIGEST

SB 698, Torlakson. Eminent domain.

The California Constitution authorizes governmental entities to take or damage private property for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner.

The Eminent Domain Law provides the procedure for the exercise of the constitutional power and authorizes the plaintiff to make an application to the court to take possession of property prior to judgment and sets forth the procedures the plaintiff must follow. Existing law requires, in this regard, that the plaintiff describe the property which the plaintiff is seeking to possess in his or her motion, to include a statement describing the defendant's right to oppose the motion, and serve a copy of that motion on the defendant owner of the property and the occupants, if any. Existing law permits a defendant or occupant of the property to oppose the motion and seek a hearing on the motion regardless of whether the hardship of having possession taken at the time specified in the order is substantial. Existing law requires the written opposition to be signed under penalty of perjury. Existing law requires a public entity to establish an amount that it believes to be just compensation for property to be acquired, and to make an offer to the owner or owners of record to acquire the property for the amount established, prior to adopting a resolution of necessity for the taking and initiating negotiations for the acquisition of real property.

The bill would provide that, if the defendant opposes the motion to take possession of the property prior to judgment, and if the written opposition asserts a hardship, it shall be supported by a declaration signed under penalty of perjury stating facts supporting the hardship. The bill would also require a public entity exercising the power of eminent domain, at the time it makes the offer to

acquire the property, as described above, to provide the property owner an informational pamphlet outlining the process of eminent domain and the property owner's rights under the Eminent Domain Law.

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

SECTION 1. Section 1255.410 of the Code of Civil Procedure is amended to read:

1255.410. (a) At the time of filing the complaint or at any time after filing the complaint and prior to entry of judgment, the plaintiff may move the court for an order for possession under this article, demonstrating that the plaintiff is entitled to take the property by eminent domain and has deposited pursuant to Article 1 (commencing with Section 1255.010) an amount that satisfies the requirements of that article.

The motion shall describe the property of which the plaintiff is seeking to take possession, which description may be by reference to the complaint, and shall state the date after which the plaintiff is seeking to take possession of the property. The motion shall include a statement substantially in the following form: "You have the right to oppose this motion for an order of possession of your property. If you oppose this motion you must serve the plaintiff and file with the court a written opposition to the motion within 30 days from the date you were served with this motion." If the written opposition asserts a hardship, it shall be supported by a declaration signed under penalty of perjury stating facts supporting the hardship.

(b) The plaintiff shall serve a copy of the motion on the record owner of the property and on the occupants, if any. The plaintiff shall set the court hearing on the motion not less than 60 days after service of the notice of motion on the record owner of unoccupied property. If the property is lawfully occupied by a person dwelling thereon or by a farm or business operation, service of the notice of motion shall be made not less than 90 days prior to the hearing on the motion.

(c) Not later than 30 days after service of the plaintiff's motion seeking to take possession of the property, any defendant or occupant of the property may oppose the motion in writing by serving the plaintiff and filing with the court the opposition. If the

written opposition asserts a hardship, it shall be supported by a declaration signed under penalty of perjury stating facts supporting the hardship. The plaintiff shall serve and file any reply to the opposition not less than 15 days before the hearing.

(d) (1) If the motion is not opposed within 30 days of service on each defendant and occupant of the property, the court shall make an order for possession of the property if the court finds each of the following:

(A) The plaintiff is entitled to take the property by eminent domain.

(B) The plaintiff has deposited pursuant to Article 1 (commencing with Section 1255.010) an amount that satisfies the requirements of that article.

(2) If the motion is opposed by a defendant or occupant within 30 days of service, the court may make an order for possession of the property upon consideration of the relevant facts and any opposition, and upon completion of a hearing on the motion, if the court finds each of the following:

(A) The plaintiff is entitled to take the property by eminent domain.

(B) The plaintiff has deposited pursuant to Article 1 (commencing with Section 1255.010) an amount that satisfies the requirements of that article.

(C) There is an overriding need for the plaintiff to possess the property prior to the issuance of final judgment in the case, and the plaintiff will suffer a substantial hardship if the application for possession is denied or limited.

(D) The hardship that the plaintiff will suffer if possession is denied or limited outweighs any hardship on the defendant or occupant that would be caused by the granting of the order of possession.

(e) (1) Notwithstanding the time limits for notice prescribed by this section and Section 1255.450, a court may issue an order of possession upon an ex parte application by a water, wastewater, gas, electric, or telephone utility, as the court deems appropriate under the circumstances of the case, if the court finds each of the following:

(A) An emergency exists and as a consequence the utility has an urgent need for possession of the property. For purposes of this section, an emergency is defined to include, but is not limited to,

a utility's urgent need to protect the public's health and safety or the reliability of utility service.

(B) An emergency order of possession will not displace or unreasonably affect any person in actual and lawful possession of the property to be taken or the larger parcel of which it is a part.

(2) Not later than 30 days after service of the order authorizing the plaintiff to take possession of the property, any defendant or occupant of the property may move for relief from an emergency order of possession that has been issued under this subdivision. The court may modify, stay, or vacate the order upon consideration of the relevant facts and any objections raised, and upon completion of a hearing if requested.

SEC. 2. Section 7267.2 of the Government Code is amended to read:

7267.2. (a) (1) 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.

(2) At the time of making the offer described in paragraph (1), the public entity shall provide the property owner with an informational pamphlet detailing the process of eminent domain and the property owner's rights under the Eminent Domain Law.

(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.

Approved _____, 2007

Governor