

SENATE BILL 1566

By Ketron

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, 29-17-103, is amended by designating the existing language as subsection (a), and is further amended by adding the following language as a new subsection (b):

(b) Subsection (a) shall not pre-empt any statutory language in contradiction to this part found in parts 2 and 3 of this chapter.

SECTION 2. Tennessee Code Annotated, Title 29, Chapter 17, Part 2, is amended by deleting the part in its entirety and by substituting instead the following:

29-17-201.

As used in this part:

(1) "AAA" means the American Arbitration Association;

(2) "Eminent domain" means the authority conferred upon the government, and those entities to whom the government delegates such authority, to condemn and take, in whole or in part, the property of a person, so long as the property is taken for a legitimate public use in accordance with the fifth and fourteenth amendments to the United States Constitution and the Constitution of Tennessee, Art. 1, § 21;

(2) "Licensed and certified appraiser" means an appraiser licensed by this state to appraise the property that is the subject of the condemnation proceedings set out in this part;

(3) "Person" means a natural person, a corporation, firm, company, association, or other legal entity;

(4) "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;

(5) "Public use" does not include either private use or benefit, or the indirect public benefits resulting from private economic development and private commercial enterprise, including increased tax revenue and increased employment opportunity, except as follows:

(A) The acquisition of property necessary for a road, highway, bridge, or other structure, facility, or project used for public transportation;

(B) Private use that is merely incidental to a public use, so long as no property is condemned or taken primarily for the purpose of conveying or permitting the incidental private use; or

(C) The acquisition of property by a county for an industrial park, as authorized by title 13, chapter 16, part 2; and

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

29-17-202.

(a) Counties are empowered to condemn and take property of persons by eminent domain for a public use. Notwithstanding any law to the contrary, a county exercising authority to condemn and take property pursuant to this subsection(a) shall

file a petition to initiate condemnation proceedings in a court that has subject matter jurisdiction over the property.

(b)

(1) Prior to a county filing a petition, the county shall send notification to the property owner that includes, at a minimum:

(A) The county's intent to initiate condemnation proceedings thirty (30) days from the date that the property owner receives the county's written notice;

(B) A statement of value which lists the amount that the county shall offer to the property owner as damages, and shall deposit as required by law; and

(C) A form, created by the county, that describes the following options available to the property owner in order to adjudicate the issue of damages:

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

(ii) The property owner may reject the amount listed in the statement of value and proceed to the negotiation process described in § 29-17-204; provided, that if a settlement does not result from the negotiation process, then the parties shall proceed to the arbitration process described in § 29-17-205;

(iii) The property owner may reject the amount listed in the statement of value and proceed to the arbitration process described in § 29-17-205 by sending a signed and dated

arbitration initiation form to the county; provided, that any settlement resulting from the arbitration process shall be final and binding on the parties; and

(iv) The property owner may reject the amount listed in the statement of value and proceed in court as provided in chapter 16, part 1 of this title, by filing an answer on the issue of damages within the thirty-day period; provided, that by filing an answer with the court, the property owner shall waive the negotiation process described in § 29-17-204 and the arbitration process described in § 29-17-205.

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

(3) If the county abandons the petition prior to the court rendering its decision on possession of the property, and if the county later decides to initiate such proceedings against the property, then the county shall send new notice pursuant to subdivision (b)(1).

(c)

(1)

(A) After the expiration of the thirty-day period described in subdivision(b)(1)(A), if the right to take has not been challenged in an answer by the property owner, then the court shall find that the county has the right to take possession of the property.

(B) If the right to take is challenged in an answer by the property owner within the thirty-day period described in subdivision(b)(1)(A), then

the court shall promptly determine, as a matter of law, whether the county has the right to take the property.

(2) If the court determines that the county has the right to take, then the county shall have the right to take possession of the property, and, if necessary, the court shall issue a writ of possession to the sheriff of the county to put the county in possession. The writ may be issued prior to a trial on the issue of damages.

29-17-203.

(a) The property owner shall send the form described in § 29-17-202(b)(1)(C), signed and dated, to the county within the thirty-day period described in § 29-17-202(b)(1)(A). If the property owner fails to send the form in the thirty-day period, then the only options available to the property owner on the issue of damages shall be the options listed in §§ 29-17-202(b)(1)(C)(i) and (iv), as applicable.

(b) Upon the expiration of the thirty day-period, the county may initiate condemnation proceedings as provided by law and, as applicable, deposit the amount listed in the statement of value as required by law; provided, that, if a county receives a form from the property owner pursuant to subsection (a), then the county shall send a copy of such form to the court.

29-17-204.

(a) If, on the prescribed form, the property owner selects the option to reject the amount listed in the statement of value and proceed to the negotiation process, then the property owner shall submit a counter offer based on an appraisal of the property conducted by a licensed and certified appraiser, at the property owner's sole expense, along with the prescribed form to the county within the thirty-day period as described in § 29-17-202(b)(1)(A).

(b) The county shall review and compare the property owner's counter offer with the amount listed in the statement of value to determine the fair market value of the property.

(c)

(1) The county shall send written notice to the property owner within thirty (30) days of receiving the property owner's counter offer. Such written notice shall state the county's decision to:

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

(B) Reject the property owner's counter offer and offer a final counter offer of:

(i) The amount listed in the statement of value; or

(ii) An amount greater than the amount in the statement of value.

(2) If the county rejects the property owner's counter offer, then the written notice provided pursuant to this subsection shall include an arbitration initiation form.

(3) If the county fails to send written notice to the property owner within the thirty day-period described in subdivision (c)(1), then the county shall be deemed to have accepted the property owner's counter offer.

(d)

(1)

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

- (i) A copy of the property owner's counter offer;
- (ii) A signed and dated form signifying the county's acceptance of the property owner's counter offer; and
- (iii) A check, money order, or similar document from the county to the court for any balance owing in excess of the amount deposited with the court, plus any interest or other such amount that the property owner is entitled to by law.

(B) The court shall, upon the request of the property owner, disburse the amount deposited by the county to the property owner.

(2) If the county accepts the property owner's counter offer and the county paid in bond to the property owner the amount in the statement of value, then the county shall issue to the property owner a check, money order, or similar document from the county to the property owner for any balance owing in excess of the amount already paid in bond, plus any interest or other such amount that the property owner is entitled to by law.

(3) If the county accepts the property owner's counter offer and the county 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 county shall send a check, money order, or similar document from the county to the property owner in the full amount listed in the property owner's counter offer, plus any interest or other such amount that the property owner is entitled to by law.

(e) If the property owner receives a rejection of the property owner's counter offer pursuant to subsection (c), the property owner may either accept or reject the amount offered by the county. If the property owner rejects the amount offered by the

county, then the property owner shall sign, date, and send the arbitration initiation form to the county within thirty (30) days of receiving the rejection notice from the county.

29-17-205.

(a) The county shall, within seven (7) days of receipt of a signed and dated arbitration initiation form, notify the AAA of such circumstances, and an arbitrator shall be appointed by the AAA under its administrative process to hear the case and determine from the evidence presented the true market value of the property taken by a county as provided in this part. The arbitrator shall be appointed within seven (7) days of receipt of the county's notice by AAA, and the arbitration shall be conducted within thirty (30) days after the appointment of the arbitrator. The parties shall share fees for such arbitration proceeding in accordance with AAA rules.

(b) The Uniform Arbitration Act, compiled in chapter 5, part 3 of this title, shall apply to a resolution of the fair market value of the property as provided in this part; provided, however, the award of the arbitrator shall be final and binding on both parties and enforceable in a court of law in accordance with the Uniform Arbitration Act.

29-17-206.

(a) All counties authorized to construct bridges are empowered to take and condemn the property of persons for approaches to such bridges and for bridge purposes, or which may be necessary for the construction or use of such bridges.

(b) Pending the assessment of damages or any litigation in regard to the assessment of damages, in any case of authorized taking and condemnation, the counties may give bond in the amount listed in the statement of value, with good and sufficient security payable to the property owner, to pay promptly to the property owner any amount of damages which may be assessed pursuant to this part or chapter 16, part

1 of this title; and, upon executing and filing such bond, the county may take the property.

SECTION 2. Tennessee Code Annotated, Title 29, Chapter 17, Part 3, is amended by deleting the part in its entirety and by substituting instead the following:

29-17-301.

As used in this part:

(1) "AAA" means the American Arbitration Association;

(2) "Eminent domain" means the authority conferred upon the government, and those entities to whom the government delegates such authority, to condemn and take, in whole or in part, the property of a person, so long as the property is taken for a legitimate public use in accordance with the fifth and fourteenth amendments to the United States Constitution and the Constitution of Tennessee, Art. 1, § 21;

(3) "Licensed and certified appraiser" means an appraiser licensed by this state to appraise the particular type of property that is the subject of the procedures set out in this part;

(4) "Municipality" means a city or town which adopts a charter pursuant to title 6 or by private act as a city;

(5) "Person" means a natural person, a corporation, firm, company, association, or other legal entity;

(6) "Property" means real property whether leasehold or in fee simple, the buildings, improvements and structures thereon, and all easements, rights, and appurtenances belonging to such land;

(7) "Public use" does not include either private use or benefit, or the indirect public benefits resulting from private economic development and private

commercial enterprise, including increased tax revenue and increased employment opportunity, except as follows:

(A) The acquisition of any interest in land necessary for a road, highway, bridge, or other structure, facility, or project used for public transportation;

(B) Private use that is merely incidental to a public use, so long as no land is condemned or taken primarily for the purpose of conveying or permitting the incidental private use; or

(C) The acquisition of property by a municipality for an industrial park, as authorized by title 13, chapter 16, part 2; and

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

29-17-302.

(a)

(1) Municipalities are empowered to condemn and take property of persons by eminent domain for a public use.

(2) If a municipality condemns and takes property for the purpose of repairing sewers, water pipes, natural gas mains and pipes, or drainage ditches, both within and beyond the corporate limits of such municipality, and of acquiring ingress and egress in the construction, repairing or maintenance thereof; such property may be so acquired whether or not the same is owned or held for public use by persons having the power of eminent domain, or otherwise held or used for a public use; provided, that such prior public use shall not be interfered with by this use. Compensation for damages in taking such property shall be paid by

such municipalities, and same shall be condemned and determined in the mode and manner provided by §§ 7-31-108 - 7-31-111.

(3) If a municipality condemns and takes property for any other purpose, including but not limited to, constructing, laying, or extending sewers, water pipes, natural gas mains and pipes, or drainage ditches, both within and beyond the corporate limits of such municipality, and for acquiring ingress and egress in the construction thereof, and in making connection thereto; such property may be so acquired whether or not the same is owned or held for public use by persons having the power of eminent domain, or otherwise held or used for a public use; provided, that such prior public use shall not be interfered with by this use. Compensation for damages in taking such property shall be determined and paid in accordance with this part.

(4) Notwithstanding any law to the contrary, a municipality exercising such power to condemn and take property pursuant to subdivision (a)(3) shall file a petition to initiate condemnation proceedings in a court that has subject matter jurisdiction over the property.

(b)

(1) Prior to a municipality filing a petition, the municipality shall send written notice to the property owner that includes, at a minimum:

(A) The municipality's intent to initiate condemnation proceedings thirty (30) days from the date that the property owner receives the municipality's written notice;

(B) A statement of value which lists the amount that the municipality shall offer to the property owner as damages, and shall deposit as required by law; and

(C) A form, created by the municipality, that describes the following options available to the property owner in order to adjudicate the issue of damages:

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

(ii) The property owner may reject the amount listed in the statement of value and proceed to the negotiation process described in § 29-17-304; provided that if a settlement does not result from the negotiation process, then the parties shall proceed to the arbitration process described in § 29-17-305;

(iii) The property owner may reject the amount listed in the statement of value and proceed to the arbitration process described in § 29-17-305 by sending a signed and dated arbitration initiation form to the municipality; provided that any settlement resulting from the arbitration process shall be final and binding on the parties; and

(iv) The property owner may reject the amount listed in the statement of value and proceed in court as provided in chapter 16, part 1 of this title, by filing an answer on the issue of damages within the thirty-day period; provided that by filing an answer with the court, the property owner shall waive the negotiation process described in § 29-17-304 and the arbitration process described in § 29-17-305.

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

(3) If the municipality abandons the petition prior to the court rendering its decision on possession of the property, and if the municipality later decides to initiate such proceedings against the property, then the municipality shall send new notice pursuant to subdivision (b)(1).

(c)

(1)

(A) After the expiration of the thirty-day period described in subdivision(b)(1)(A), if the right to take has not been challenged in an answer by the property owner, then the court shall find that the municipality has the right to take possession of the property.

(B) If the right to take is challenged in an answer by the property owner within the thirty-day period described in subdivision(b)(1)(A), then the court shall promptly determine, as a matter of law, whether the municipality has the right to take the property.

(2) If the court determines that the municipality has the right to take, then the municipality shall have the right to take possession of the property, and, if necessary, the court shall issue a writ of possession to the sheriff of the municipality to put the municipality in possession. The write may be issued prior to a trial on the issue of damages.

29-17-303.

(a) The property owner shall send the form described in § 29-17-302(b)(1)(C), signed and dated, to the municipality within the thirty-day period described in § 29-17-

302(b)(1)(A). If the property owner fails to send the form in the thirty-day period, then the only options available to the property owner on the issue of damages shall be the options listed in §§ 29-17-302(b)(1)(C)(i) and (iv), as applicable.

(b) Upon the expiration of the thirty day-period, the municipality may initiate condemnation proceedings as provided by law and, as applicable, deposit the amount listed in the statement of value as required by law; provided that, if a municipality receives a signed and dated form from the property owner pursuant to subsection (a), then the municipality shall send a copy of such form to the court.

29-17-304.

(a) If, on the prescribed form, the property owner selects the option to reject the amount listed in the statement of value and proceed to the negotiation process, then the property owner shall submit a counter offer to the municipality based on an appraisal of the property conducted by a licensed and certified appraiser, at the property owner's sole expense, along with the prescribed form to the municipality within the thirty-day period as described in § 29-17-302(b)(1)(A).

(b) The municipality shall review and compare the property owner's counter offer with the amount listed in the statement of value to determine the fair market value of the property.

(c)

(1) The municipality shall send written notice to the property owner within thirty (30) days of receiving the property owner's counter offer. Such written notice shall state the municipality's decision to:

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

(B) Reject the property owner's counter offer and offer a final counter offer of:

- (i) The amount listed in the statement of value; or
- (ii) An amount greater than the amount in the statement of value.

(2) If the municipality rejects the property owner's counter offer, then the written notice provided pursuant to this subsection shall include an arbitration initiation form, signed and dated by the municipality.

(3) If the municipality fails to send written notice to the property owner within the thirty day-period described in subdivision (c)(1), then the municipality shall be deemed to have accepted the property owner's counter offer.

(d)

(1)

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

- (1) A copy of the property owner's counter offer;
- (2) A signed and dated form signifying the municipality's acceptance of the property owner's counter offer; and

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

(B) The court shall, upon the request of the property owner, disburse the amount deposited by the municipality to the property owner.

(2) If the municipality accepts the property owner's counter offer and the municipality paid in bond to the property owner the amount in the statement of value, then the municipality shall issue to the property owner a check, money order, or similar document from the municipality to the property owner for any balance owing in excess of the amount already paid in bond, plus any interest or other such amount that the property owner is entitled to by law.

(3) If the municipality accepts the property owner's counter offer and the municipality 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 municipality shall send a check, money order, or similar document from the municipality to the property owner in the full amount listed in the property owner's counter offer, plus any interest or other such amount that the property owner is entitled to by law.

(e) If the property owner receives a rejection of the property owner's counter offer pursuant to subsection (c), the property owner may either accept or reject the amount offered by the municipality. If the property owner rejects the amount offered by the municipality, then the property owner shall sign, date, and send the arbitration initiation form to the municipality within thirty (30) days of receiving the rejection notice from the municipality.

29-17-305.

(a) The municipality shall, within seven (7) days of receipt of a signed and dated arbitration initiation form, notify the AAA of such circumstances, and an arbitrator shall be appointed by the AAA under its administrative process to hear the case and determine from the evidence presented the true market value of the property taken by a municipality as provided in this part. The arbitrator shall be appointed within seven (7) days of receipt of the municipality's notice by AAA, and the arbitration shall be conducted

within thirty (30) days after the appointment of the arbitrator. The parties shall share fees for such arbitration proceeding in accordance with AAA rules.

(b) The Uniform Arbitration Act, compiled in chapter 5, part 3 of this title, shall apply to a resolution of the fair market value of the property as provided in this part; provided, however, the award of the arbitrator shall be final and binding on both parties and enforceable in a court of law in accordance with the Uniform Arbitration Act.

SECTION 3. Tennessee Code Annotated, 29-17-801(b), is amended by adding the following language to the beginning of the subsection: "Notwithstanding any law to the contrary."

SECTION 4. 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 county or municipality for a public purpose on or after the effective date of this act.