

116TH CONGRESS
1ST SESSION

S. 263

To ensure the receipt of required compensation before physical possession by the Federal Government of any land subject to the use of eminent domain for the construction of United States border infrastructure and to provide for a consultation process prior to acquiring land for border infrastructure.

IN THE SENATE OF THE UNITED STATES

JANUARY 29, 2019

Mr. HEINRICH (for himself, Ms. HARRIS, Mrs. FEINSTEIN, and Mr. UDALL) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To ensure the receipt of required compensation before physical possession by the Federal Government of any land subject to the use of eminent domain for the construction of United States border infrastructure and to provide for a consultation process prior to acquiring land for border infrastructure.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Full Fair and Com-
5 plete Exchange Act” or the “FACE Act”.

1 **SEC. 2. RECEIPT OF COMPENSATION REQUIRED FOR USE**
 2 **OF EMINENT DOMAIN FOR CONSTRUCTION**
 3 **OF BORDER INFRASTRUCTURE.**

4 Notwithstanding section 3114 of title 40, United
 5 States Code, or section 102 of the Illegal Immigration Re-
 6 form and Immigrant Responsibility Act of 1996 (8 U.S.C.
 7 1103 note; Public Law 104–208) the Federal Government
 8 shall not take physical possession of any land acquired,
 9 or proposed to be acquired, pursuant to those sections for
 10 the construction of any infrastructure (including a pedes-
 11 trian fence, vehicle barrier, levee, gate, wall, fence, road,
 12 or port of entry) at the international border between the
 13 United States and Mexico until the date on which the ap-
 14 plicable court determines that—

15 (1) in the case of private land—

16 (A) all persons or entities entitled to com-
 17 pensation for the acquisition have received the
 18 entire full fair market value amount of com-
 19 pensation due on the date of acquisition of the
 20 private land; and

21 (B) all relevant court proceedings de-
 22 scribed in section 3114(a) of title 40, United
 23 States Code, have been—

24 (i) completed; and

25 (ii) terminated by the court;

1 (2) in the case of State land (including State
2 land in the vicinity of a unit of the National Wildlife
3 Refuge System, a unit of the National Park System,
4 or Tribal land or in the vicinity of a historic district
5 or a State park)—

6 (A) the requirements of subparagraphs (A)
7 and (B) of paragraph (1) have been met; and

8 (B) all relevant stakeholders have been
9 consulted on the acquisition, including—

10 (i) any State agencies that manage
11 the State land;

12 (ii) any State agencies that administer
13 the use of resources on the State land;

14 (iii) any permittees, leaseholders, and
15 other users of the State land; and

16 (iv) any individuals, communities, and
17 Tribes that could be impacted by the con-
18 struction of the structure on the State
19 land, as determined by the Secretary; and

20 (3) in the case of Tribal land—

21 (A) the requirements of subparagraphs (A)
22 and (B) of paragraph (1) have been met; and

23 (B) all relevant Tribal stakeholders have
24 been consulted and have approved the acquisi-
25 tion.

1 **SEC. 3. CONSULTATION REQUIRED PRIOR TO ACQUISITION**
2 **OF LAND FOR CONSTRUCTION OF BORDER**
3 **INFRASTRUCTURE.**

4 (a) IN GENERAL.—Before implementing any plan to
5 acquire private land, State land, or Tribal land on which
6 the Secretary of Homeland Security (referred to in this
7 section as the “Secretary”) intends to build or construct
8 a temporary or permanent structure related to efforts to
9 secure or protect the border between the United States
10 and Mexico, the Secretary shall conduct meaningful and
11 significant consultation with—

12 (1) any owners of the parcels of land proposed
13 to be acquired;

14 (2) any State agencies that manage the applica-
15 ble land;

16 (3) any other State agencies that administer
17 the use of resources on the applicable land;

18 (4) any permittees, leaseholders, and other
19 users of the applicable land; and

20 (5) any individuals, communities, or Tribes that
21 could be impacted by the construction of the struc-
22 ture on the applicable land, as determined by the
23 Secretary.

24 (b) PUBLIC MEETINGS.—The Secretary shall conduct
25 2 public meetings located within 100 miles of each parcel
26 of private land, State land, or Tribal land subject to poten-

1 tial acquisition under subsection (a), subject to the re-
2 quirements that—

3 (1) the first public meeting shall be conducted
4 at the beginning of the consultation process under
5 subsection (a)—

6 (A) to inform any landowner or entity, as
7 described in subsection (a)(1), of the intent of
8 the Secretary to acquire the land from the land-
9 owner; and

10 (B) to receive comments and input regard-
11 ing the proposed acquisition; and

12 (2) the second public meeting shall be con-
13 ducted at the end of the consultation process under
14 subsection (a) to inform any landowner or entity, as
15 described in subsection (a)(1), of—

16 (A) the decision of the Secretary relating
17 to the proposed acquisition; and

18 (B)(i) any changes to the acquisition plan
19 to address issues raised during the consultation
20 process; or

21 (ii) any reasons for not making changes to
22 the acquisition plan to address issues raised
23 during the consultation process.

1 (c) FINAL PLANS; TRANSPARENCY.—Before begin-
2 ning construction of a temporary or permanent structure
3 described in subsection (a), the Secretary shall—

4 (1) give significant weight to the opinions and
5 information presented to the Secretary during the
6 consultation process conducted under that sub-
7 section; and

8 (2) publish in the Federal Register information
9 describing—

10 (A) ways in which the final plan of the
11 Secretary for acquiring the land or constructing
12 the structure was modified as a result of the
13 consultation process conducted under that sub-
14 section; and

15 (B) ways in which the final plan of the
16 Secretary for acquiring the land or constructing
17 the structure was not modified as a result of
18 valid concerns raised to the proposed modifica-
19 tions during the consultation process conducted
20 under that subsection.

○