

EMINENT DOMAIN AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Craig A. Frank

LONG TITLE

General Description:

This bill amends provisions relating to a settlement offer and litigation expenses in an eminent domain action.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates a time line for a defendant or a plaintiff to file a settlement offer;
- ▶ sets requirements for a settlement offer;
- ▶ authorizes the court to, under certain circumstances, award litigation expenses; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-6-509, as renumbered and amended by Laws of Utah 2008, Chapter 3

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78B-6-509** is amended to read:

78B-6-509. Powers of court or judge -- Settlement offer -- Litigation expenses.

(1) As used in this section, "litigation expenses" means costs necessary to prepare for

30 and conduct a trial, including:

31 (a) court costs;

32 (b) expert witness fees;

33 (c) appraisal fees; and

34 (d) reasonable attorney fees.

35 (2) The court shall have the power to:

36 [(+) (a) hear and determine all adverse or conflicting claims to the property sought to
37 be condemned, and the damages; and

38 [(2)] (b) determine the respective rights of different parties seeking condemnation of
39 the same property.

40 (3) (a) A plaintiff described in Subsection 78B-6-507(1)(a) may make a settlement
41 offer for purposes of this Subsection (3) at any time:

42 (i) following the close of discovery as ordered by the court, but no later than 60 days
43 before the first day of trial; or

44 (ii) if no order setting the close of discovery exists:

45 (A) more than nine months from the day that the complaint is filed; and

46 (B) no later than 60 days before the first day of trial.

47 (b) Subject to Subsection (3)(c), an offer under Subsection (3)(a) shall:

48 (i) be in writing;

49 (ii) be served in accordance with Rule 5, Utah Rules of Civil Procedure, on each
50 defendant to whom the offer is addressed;

51 (iii) be an offer made:

52 (A) to the defendant; or

53 (B) if more than one defendant, jointly to all defendants who have appeared in the case
54 and have not been dismissed;

55 (iv) state that the offer is being made under Subsection (3)(a); and

56 (v) specify the amount, less interest and litigation expenses, that the plaintiff is willing
57 to agree is the total just compensation to which the defendant is or defendants jointly are

58 entitled to receive for the property identified in the pending action.

59 (c) An offer described in Subsection (3)(a) may not be filed with the court unless
60 accepted or in connection with a motion for the award of litigation expenses following trial.

61 (d) (i) Unless an offer provides a time for the offer to expire, an offer under Subsection
62 (3)(a) shall expire and be deemed rejected 45 days after service.

63 (ii) An offer that expires or is rejected under Subsection (3)(d)(i):

64 (A) is not admissible in evidence; and

65 (B) may not be referred to at trial.

66 (4) (a) A defendant who receives an offer under Subsection (3)(a) may accept the offer
67 by serving an acceptance of the offer, prior to its expiration, in accordance with Rule 5, Utah
68 Rules of Civil Procedure.

69 (b) If there is more than one defendant, defendants may accept the offer by serving a
70 joint acceptance of the offer, prior to its expiration, in accordance with Rule 5, Utah Rules of
71 Civil Procedure.

72 (c) Any party may file with the court an offer made under Subsection (3)(a) together
73 with its acceptance made under Subsection (4)(b).

74 (d) A plaintiff is entitled to a final judgment of condemnation as prayed for in the
75 complaint upon paying to the defendant or defendants, or depositing with the court clerk for the
76 benefit of the defendants:

77 (i) the amount of total just compensation agreed to in the offer accepted as described in
78 Subsection (4)(a); and

79 (ii) any interest due as provided by law.

80 (e) If there are multiple defendants, the court shall, upon application filed by a
81 defendant, determine each defendant's respective share of the settlement amount.

82 (5) (a) A defendant described in Subsection 78B-6-507(1)(b), or if there is more than
83 one defendant that has appeared in the case and has not been dismissed, then all defendants
84 jointly, may make an offer under this Subsection (5):

85 (i) within 30 days after they receive an offer from the plaintiff under Subsection (3)(a);

86 or

87 (ii) if the plaintiff does not make an offer under Subsection (3)(a), any time following
88 close of discovery as ordered by the court, but not later than 45 days before the first day of trial.

89 (b) An offer described in Subsection (5)(a) shall:

90 (i) be in writing;

91 (ii) be served in accordance with Rule 5, Utah Rules of Civil Procedure;

92 (iii) (A) be made on behalf of the defendant; or

93 (B) if there are multiple defendants, the offer shall be made by and on behalf of all
94 defendants jointly who have appeared in the action and have not been dismissed;

95 (iv) state that the offer is being made under Subsection (5)(a); and

96 (v) specify the amount, less interest and litigation expenses, that the defendant or
97 defendants jointly are willing to agree is the total just compensation to which the defendant is
98 or defendants jointly are entitled to receive for the property identified in the pending action.

99 (c) An offer described in Subsection (5)(a) may not be filed with the court unless
100 accepted or in connection with a motion for the award of litigation expenses following trial.

101 (d) An offer of settlement made by less than all defendants that have appeared in the
102 case and have not been dismissed:

103 (i) is not an offer under Subsection (5)(a); and

104 (ii) may not be a basis for awarding litigation expenses under Subsection (7).

105 (e) (i) Unless an offer provides a time for the offer to expire, an offer under Subsection
106 (5)(a) shall expire and be deemed rejected 21 days after service.

107 (ii) An offer that expires or is rejected under Subsection (5)(e)(i) is not admissible in
108 evidence and may not be referred to at trial.

109 (6) (a) A plaintiff who receives an offer under Subsection (5)(a) may accept the offer
110 by serving an acceptance of the offer, prior to its expiration, in accordance with Rule 5, Utah
111 Rules of Civil Procedure.

112 (b) Any party may file with the court an offer made under Subsection (5)(a) together
113 with its acceptance made under Subsection (6)(a).

114 (c) A plaintiff is entitled to a final judgment of condemnation as prayed for in the
115 complaint upon paying to the defendant or defendants, or depositing with the court clerk for the
116 benefit of the defendants:

117 (i) the amount of total just compensation agreed to in the offer accepted as described in
118 Subsection (6)(a); and

119 (ii) any interest due as provided by law.

120 (d) If there are multiple defendants, the court shall, upon application filed by a
121 defendant, determine each defendant's respective share of the settlement amount.

122 (7) (a) Subject to Subsection (7)(b), if the total just compensation awarded to a
123 defendant or defendants, less interest and litigation expenses, is greater than the amount of total
124 just compensation specified in the last settlement offer made by a defendant or defendants
125 under Subsection (5)(a), the court shall award the defendant or defendants litigation expenses
126 not to exceed 1/3 of the amount by which the award of just compensation exceeds the amount
127 offered in the last settlement offer under Subsection (5)(a).

128 (b) An award under Subsection (7)(a) may not exceed:

129 (i) if there is one defendant in the case, \$50,000; or

130 (ii) if there are multiple defendants in the case, \$100,000 total.

131 (c) The court shall include any amounts awarded under Subsection (7)(a) in the
132 judgment awarding compensation.

133 (8) (a) Subject to Subsection (8)(b), if the total just compensation awarded to a
134 defendant or defendants, less interest and litigation expenses, is less than the amount of total
135 just compensation specified in the last settlement offer made by a plaintiff under Subsection
136 (3)(a), the court shall award the plaintiff litigation expenses not to exceed 1/3 of the amount by
137 which the last offer of settlement made under Subsection (3)(a) exceeds the total just
138 compensation awarded.

139 (b) An award under Subsection (8)(a) may not exceed \$50,000.

140 (c) The court shall reduce the judgment awarding just compensation by the amount of
141 litigation expenses awarded to the plaintiff under Subsection (8)(a).

142 (9) If the total just compensation awarded to a defendant, less interest or litigation
143 expenses, is between an offer made by a plaintiff under Subsection (3)(a) and an offer made by
144 the defendant under Subsection (5)(a), the court may not award litigation expenses to either
145 plaintiff or a defendant.

146 (10) (a) If a plaintiff does not make an offer under Subsection (3)(a), the court may not
147 award:

148 (i) the plaintiff litigation expenses; or

149 (ii) the defendant litigation expenses more than the defendant's last offer under
150 Subsection (5)(a), if the defendant made an offer under Subsection (5)(a).

151 (b) If a defendant does not make an offer under Subsection (5)(a), the court may not
152 award:

153 (i) the defendant litigation expenses; or

154 (ii) the plaintiff litigation expenses more than the plaintiff's last offer under Subsection
155 (3)(a), if the plaintiff made an offer under Subsection (3)(a).

156 (11) A claim for attorney fees under this section must be supported by an hourly billing
157 statement.

158 (12) Subsections (3) through (10) do not apply to an action filed before July 1, 2010.