

**Senator Lyle W. Hillyard** proposes the following substitute bill:

**EMINENT DOMAIN AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Lyle W. Hillyard**

House Sponsor: Craig A. Frank

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**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

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

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

28 **78B-6-509. Powers of court or judge -- Settlement offer -- Litigation expenses.**

29 (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 attorneys fees under this section must be supported by an hourly  
157 billing statement.

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

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**S.B. 81 2nd Sub. (Salmon) - Eminent Domain Amendments**

**Fiscal Note**

2010 General Session

State of Utah

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**State Impact**

It is unknown at this time how many cases will reach trial under provisions of this bill. If the Department of Transportation has increased costs those expenditures would decrease the scope of UDOT's construction program proportionally.

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**Individual, Business and/or Local Impact**

Enactment of this bill could result in direct, measurable costs and/or benefits for individuals, businesses who are involved in eminent domain disputes. Local governments could have measurable costs and/or benefits when they are involved in eminent domain disputes.

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