

**1st Sub. S.B. 81**  
**EMINENT DOMAIN AMENDMENTS**

Senator **Lyle W. Hillyard** proposes the following amendments:

1. *Page 1, Lines 14 through 17:*

14           ▶       requires that a person exercising the right of eminent domain ~~{bare}~~ bear the burden of  
15 proof in an eminent domain action;  
16           ▶       ~~{requires a court to award a defendant to an eminent domain action costs if the~~  
17 ~~defendant prevails in the action}~~ designates the time in which a settlement offer or a counter offer  
may be offered;  
authorizes a judge to award, under certain circumstances, court costs or reasonable attorney  
fees ; and

2. *Page 2, Lines 35 through 40:*

35           (2) (a) For an action brought under this part, a ~~{person}~~ plaintiff described in Subsection  
78B-6-507 (1)(a) filing a complaint described in  
36 Section 78B-6-507 shall have the burden to prove by a preponderance of the evidence that the  
37 person has:  
38           ~~{(a)}~~ (i) exercised the right of eminent domain for a use described in Section 78B-6-501;  
39 and  
40           ~~{(b)}~~ (ii) met the requirements, if applicable, set forth in Sections 78B-6-504 and 78B-6-505.

3. *Page 2, Line 38:*

38           ~~{(a)}~~ (i) exercised the right of eminent domain for a use described in Section 78B-6-501;

4. *Page 2, Lines 41 through 43:*

41           ~~{(3) If a defendant described in Subsection 78B-6-507(1)(b) prevails in an action~~  
42 ~~brought under this part, the court shall award the defendant costs, including reasonable attorney~~  
43 ~~fees.}~~ (3)(a) This Subsection (3):  
(i) does not apply to a proceeding described in Section 78B-6-513; and  
(ii) applies only to a claim related to the appraised value of the property.  
(b) A plaintiff described in Subsection 78B-6-507 (1)(a) may offer a settlement offer on or  
before 60 days before the first scheduled day of trial.  
(c) After receiving a settlement offer under Subsection (3)(b), a defendant described in  
Subsection 78B-6-507 (1)(c) may offer a counter offer on or before 30 days before the first scheduled day

of trial.

(d) An offer made under Subsection (3)(b) or (c) may not be shared with or acknowledged before the jury.

(e) If a defendant does not offer a counter offer under Subsection (3)(c) in response to a settlement offer made under Subsection (3)(b), the defendant may not collect court costs or reasonable attorney fees under this part.

(f) If a jury verdict awards an amount that is in between the settlement offer amount offered under Subsection (3)(b) and the counter offer amount offered under Subsection (3)(c), the judge may not award the plaintiff or the defendant court costs or reasonable attorney fees under this part.

(g)(i) If a jury verdict awards an amount that is above a defendant's counter offer amount offered under Subsection (3)(c), the judge may award the defendant court costs or reasonable attorney fees under this part in an amount not to exceed 1/3 of the difference between the verdict award and the defendant's counter offer.

(ii) If a jury verdict awards an amount that is below the plaintiff's settlement offer amount offered under Subsection (3)(b), the judge may award the plaintiff court costs or reasonable attorney fees under this part in an amount not to exceed 1/3 of the difference between the verdict award and the plaintiff's settlement offer.