

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

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

1. *Page 1, Lines 9 through 18:*

9 This bill ~~{requires that a person exercising the right of eminent domain bear the burden~~
10 ~~of proof in an eminent domain action and requires a court to award a defendant to an~~
11 ~~eminent domain action costs if the defendant prevails in the action.}~~ amends provisions relating to a
settlement offer and litigation expenses in an eminent domain action.

12 Highlighted Provisions:

13 This bill:

14 ▶ ~~{requires that a person exercising the right of eminent domain bare the burden of~~
15 ~~proof in an eminent domain action;}~~ defines terms;
16 ▶ ~~{requires a court to award a defendant to an eminent domain action costs if the~~
17 ~~defendant prevails in the action; and}~~ 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

18 ▶ makes technical corrections.

2. *Page 2, Lines 29 through 30:*

29 78B-6-509. Powers of court or judge -- ~~{Judicial review}~~ -- ~~{Attorney fees}~~ Settlement
offer -- Litigation expenses .

30 (1) As used in this section, "litigation expenses" means costs necessary to prepare for and
conduct a trial, including:

(a) court costs;

(b) expert witness fees;

(c) appraisal fees; or

(d) reasonable attorney fees.

(2) The court shall have the power to:

3. *Page 2, Lines 35 through 43:*

35 ~~{(2) For an action brought under this part, a person 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) exercised the right of eminent domain for a use described in Section 78B-6-501;~~
39 ~~and~~
40 ~~_____ (b) met the requirements, if applicable, set forth in Sections 78B-6-504 and 78B-6-505.~~
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) A plaintiff described in Subsection 78B-6-507(1)(a) may make a settlement offer for~~
~~purposes of this Subsection (3) at any time:~~
~~(i) following the close of discovery as ordered by the court; or~~
~~(ii) if no order setting the close of discovery exists:~~
~~(A) more than nine months from the day that the complaint is filed; and~~
~~(B) no later than 60 days before the first day of trial.~~
~~(b) Subject to Subsection (3)(c), an offer under Subsection (3)(a) shall:~~
~~(i) be in writing;~~
~~(ii) be served in accordance with Rule 5, Utah Rules of Civil Procedure, on each defendant to~~
~~whom the offer is addressed;~~
~~(iii) be addressed:~~
~~(A) to the defendant; or~~
~~(B) jointly to all defendants who:~~
~~(I) have filed an answer or otherwise appeared in the case; and~~
~~(II) have not been dismissed;~~
~~(iv) state the statutory authority for the settlement offer described in Subsection (3)(a);~~
~~(v) specify the amount, less interest and litigation expenses, that the plaintiff is willing to~~
~~agree is the total just compensation to which the defendant is or joint defendants are entitled to receive~~
~~for the property identified in the pending action.~~
~~(c) An offer described in Subsection (3)(a) may not be filed with the court unless accepted or in~~
~~connection with a motion for the award of litigation expenses following trial.~~
~~(d)(i) Unless an offer provides a time for the offer to expire or be rejected, an offer under~~
~~Subsection (3)(a) shall expire and be rejected 45 days after the day on which the offer is served.~~
~~(ii) An offer that expires or is rejected under Subsection (3)(d)(i):~~
~~(A) is not admissible in evidence; and~~
~~(B) may not be referred to at trial.~~
~~(4)(a) Subject to Subsection (4)(b), a defendant who receives an offer under Subsection (3)(a):~~
~~(i) may accept the offer by serving an acceptance of the offer in accordance with Rule 5, Utah~~
~~Rules of Civil Procedure; and~~
~~(ii) may not accept the offer after 10 days after the day that the offer is served.~~
~~(b) If there is more than one defendant and the defendants accept the offer, the defendants shall~~
~~accept the offer jointly.~~
~~(c) The defendant or plaintiff may file an acceptance described in Subsection (4)(a)(i) accompanied~~
~~by the offer described in Subsection (3)(a).~~

(d) A plaintiff is entitled to a final judgment of condemnation if the plaintiff pays the defendant or defendants, or court clerk for the defendant's benefit:

(i) an amount agreed to in the acceptance described in Subsection (4)(a)(i); and

(ii) any interest due:

(A) as provided by law; or

(B) as agreed to by the defendant and the plaintiff.

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

(5)(a) A defendant described in Subsection 78B-6-507(1)(b):

(i) subject to subsection (5)(b), may make a settlement offer under this Subsection (5):

(A) any time after the ordered close of discovery; or

(B) if the court has not issued an order to close discovery, within 30 days after the day on which a plaintiff makes an offer; and

(ii) if there are multiple defendants, shall file a joint settlement offer if each defendant:

(I) has filed an answer or otherwise appeared in the case; and

(II) has not been dismissed.

(b) Except as provided in Subsection (5)(c), an offer described in Subsection (5)(a)(i) shall:

(i) be in writing;

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

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

(B) if there are multiple defendants and subject to Subsection (5)(d), on behalf of the defendants jointly if each defendant who jointly files:

(I) has filed an answer or otherwise appeared in the case; and

(II) has not been dismissed;

(iv) state the statutory authority for the settlement offer described in Subsection (5)(a)(i); and

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

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

(d) If a defendant described in Subsection (5)(b)(iii)(B) does not join in the offer, the offer under Subsection (5)(a)(i):

(i) is invalid; and

(ii) may not be used in determining an award of litigation expenses under Subsection (7).

(e)(i) Unless an offer provides a time for the offer to expire or be rejected, an offer under Subsection (5)(a)(i) shall expire and be rejected 45 days after the day on which the offer is served.

(ii) An offer that expires or is rejected under Subsection (5)(e)(i):

(A) is not admissible in evidence; and

(B) may not be referred to at trial.

(6)(a) A plaintiff who receives an offer under Subsection (5)(a)(i):

(i) may accept the offer by serving an acceptance of the offer in accordance with Rule 5, Utah Rules of Civil Procedure; and

(ii) may not accept the offer after 10 days after the day that the offer is served.

(b) The defendant or plaintiff may file an acceptance described in Subsection (6)(a)(i) accompanied by the offer described in Subsection (5)(a)(i).

(c) A plaintiff is entitled to a final judgment of condemnation if the plaintiff pays the defendant or defendants, or court clerk for the defendant's benefit:

(i) an amount agreed to in the acceptance described in Subsection (6)(a)(i); and

(ii) any interest due:

(A) as provided by law; or

(B) as agreed to by the defendant and the plaintiff.

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

(7)(a) Subject to Subsection (7)(b), if the total just compensation awarded to a defendant, less interest or litigation expenses, is greater than the amount of total just compensation specified in the last settlement offer made by a defendant under Subsection (5)(a)(i), the court shall award the defendant litigation expenses not to exceed 1/3 of the amount specified in the last settlement offer under Subsection (5)(a)(i).

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

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

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

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

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

(ii) The court shall reduce the judgment awarding just compensation by the amount of litigation expenses awarded to the plaintiff.

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

(a) the defendant; or

(b) the plaintiff.

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

(i) the plaintiff litigation expenses; or

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

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

(i) the defendant litigation expenses; or
(ii) the plaintiff litigation expenses more than the plaintiff's last offer under Subsection (3)(a)
if the plaintiff made an offer under Subsection (3)(a).

(10) A person claiming attorney fees under this section shall provide an hourly billing statement.

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