

**EMINENT DOMAIN REVISIONS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Bradley G. Last**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill makes changes to eminent domain provisions.

**Highlighted Provisions:**

This bill:

▶ requires the complaint to state the specific public purpose for the eminent domain action;

▶ ~~changes the date on attorney fees to 2009;~~

▶ removes the provision allowing condemnor to abandon the proceedings any time prior to final payment;

▶ allows a property owner to have another appraisal performed by an independent appraiser approved by the mediator or arbitrator; and

▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**78B-6-507**, as renumbered and amended by Laws of Utah 2008, Chapter 3

**78B-6-509**, as last amended by Laws of Utah 2010, Chapter 26

H.B. 457



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

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

188 ~~H→ [(12) Subsections (3) through (10) do not apply to an action filed before July 1, [2010]~~  
 189 ~~2009:] ←H~~

190 Section 3. Section **78B-6-511** is amended to read:

191 **78B-6-511. Compensation and damages -- How assessed.**

192 The court, jury, or referee shall hear any legal evidence offered by any of the parties to  
 193 the proceedings, and determine and assess:

194 (1) (a) the value of the property sought to be condemned and all improvements  
 195 pertaining to the realty;

196 (b) the value of each and every separate estate or interest in the property; and

197 (c) if it consists of different parcels, the value of each parcel and of each estate or  
 198 interest in each shall be separately assessed;

199 (2) if the property sought to be condemned constitutes only a part of a larger parcel, the  
 200 damages which will accrue to the portion not sought to be condemned by reason of its  
 201 severance from the portion sought to be condemned and the construction of the improvement in  
 202 the manner proposed by the plaintiff;

203 (3) if the property, though no part of it is taken, will be damaged by the construction of  
 204 the proposed improvement, and the amount of the damages;

205 (4) separately, how much the portion not sought to be condemned, and each estate or  
 206 interest in it, will be specially benefitted, if at all, by the construction of the improvement  
 207 proposed by the plaintiff. If the special benefit is equal to the damages assessed under  
 208 Subsection (2), the owner of the parcel shall be allowed no compensation except the value of  
 209 the portion taken; but if the special benefit is less than the damages assessed, the former shall  
 210 be deducted from the latter, and the remainder shall be the only damages allowed in addition to  
 211 the value of the portion taken;

212 (5) if the property sought to be condemned consists of water rights or part of a water  
 213 delivery system or both, and the taking will cause present or future damage to or impairment of

214 the water delivery system not being taken, including impairment of the system's carrying  
215 capacity, an amount to compensate for the damage or impairment;

216 (6) if land on which crops are growing at the time of service of summons is sought to  
217 be condemned, the value that those crops would have had after being harvested, taking into  
218 account the expenses that would have been incurred cultivating and harvesting the crops; and

219 (7) as far as practicable, compensation [~~shall be assessed~~] for each source of damages  
220 separately.

221 Section 4. Section **78B-6-517** is amended to read:

222 **78B-6-517. Substitution of bond for deposit paid into court.**

223 In the event that no order is entered by the court permitting payment of the deposit on  
224 account of the just compensation to be awarded in the proceeding within 30 days following its  
225 deposit, the court may, on application of the condemning authority, permit the substitution of a  
226 bond in an amount and with sureties as determined and approved by the court. ~~H~~→ [f] **Condemner,**  
227 **whether a public or private body, may, at any time prior to final payment of compensation and**  
228 **damages awarded the defendant a decision at trial on damages by the court or jury,**  
228a **abandon the proceedings and cause the**  
229 **action to be dismissed without prejudice, provided, however, that as a condition of dismissal**  
230 **condemner first compensate condemnee for all damages he has sustained and also reimburse**  
231 **him in full for all reasonable and necessary expenses actually incurred by condemnee because**  
232 **of the filing of the action by condemner, including attorney fees. [j] ←H**

233 Section 5. Section **78B-6-522** is amended to read:

234 **78B-6-522. Dispute resolution.**

235 (1) In any dispute between a condemner and a private property owner arising out of this  
236 chapter, the private property owner may submit the dispute for mediation or arbitration to the  
237 Office of the Property Rights Ombudsman under Section 13-43-204.

238 (2) An action submitted to the Office of the Property Rights Ombudsman under  
239 authority of this section does not bar or stay any action for occupancy of premises authorized  
240 by Section 78B-6-510.

241 (3) (a) (i) A mediator or arbitrator, acting at the request of the property owner under  
242 Section 13-43-204, has standing in an action brought in district court under this chapter to file  
243 with the court a motion to stay the action during the pendency of the mediation or arbitration.

244 (ii) A mediator or arbitrator may not file a motion to stay under Subsection (3)(a)(i)