

EMINENT DOMAIN REVISIONS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Bradley G. Last

Senate Sponsor: _____

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



28 **78B-6-511**, as renumbered and amended by Laws of Utah 2008, Chapter 3
 29 **78B-6-517**, as renumbered and amended by Laws of Utah 2008, Chapter 3
 30 **78B-6-522**, as last amended by Laws of Utah 2011, Chapter 385



31
 32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **78B-6-507** is amended to read:

34 **78B-6-507. Complaint -- Contents.**

35 (1) The complaint shall contain:

36 (a) the name of the corporation, association, commission or person in charge of the
 37 public use for which the property is sought, who must be styled plaintiff;

38 (b) the names of all owners and claimants of the property, if known, or a statement that
 39 they are unknown, who must be styled defendants;

40 (c) a statement of the right of the plaintiff;

41 (d) if a right of way is sought, its location, general route, beginning and ending, and be
 42 accompanied by a map of the proposed right of way, as it is involved in the action or
 43 proceeding;

44 (e) if any interest in land is sought for a right of way or associated facilities for a
 45 subject activity as defined in Section 19-3-318:

46 (i) the permission of the governor with the concurrence of the Legislature authorizing:

47 (A) use of the site for the subject activity; and

48 (B) use of the proposed route for the subject activity; and

49 (ii) the proposed route as required by Subsection (1)(d); ~~and~~

50 (f) a description of each piece of land sought to be taken, and whether it includes the
 51 whole or only part of an entire parcel or tract[-]; and

52 (g) the specific public purpose for which the power of eminent domain is being
 53 exercised.

54 (2) All parcels lying in the county and required for the same public use may be
 55 included in the same or separate proceedings, at the option of the plaintiff, but the court may
 56 consolidate or separate them to suit the convenience of parties.

57 Section 2. Section **78B-6-509** is amended to read:

58 **78B-6-509. Powers of court or judge -- Settlement offer -- Litigation expenses.**

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

- 61 (a) court costs;
- 62 (b) expert witness fees;
- 63 (c) appraisal fees; and
- 64 (d) reasonable attorney fees.

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

66 (a) hear and determine all adverse or conflicting claims to the property sought to be
67 condemned, and the damages; and

68 (b) determine the respective rights of different parties seeking condemnation of the
69 same property.

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

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

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

- 75 (A) more than nine months from the day that the complaint is filed; and
- 76 (B) no later than 60 days before the first day of trial.

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

78 (i) be in writing;

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

81 (iii) be an offer made:

82 (A) to the defendant; or

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

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

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

89 (c) An offer described in Subsection (3)(a) may not be filed with the court unless

90 accepted or in connection with a motion for the award of litigation expenses following trial.

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

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

94 (A) is not admissible in evidence; and

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

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

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

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

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

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

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

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

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

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

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

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

120 (i) be in writing;

- 121 (ii) be served in accordance with Rule 5, Utah Rules of Civil Procedure;
- 122 (iii) (A) be made on behalf of the defendant; or
- 123 (B) if there are multiple defendants, the offer shall be made by and on behalf of all
- 124 defendants jointly who have appeared in the action and have not been dismissed;
- 125 (iv) state that the offer is being made under Subsection (5)(a); and
- 126 (v) specify the amount, less interest and litigation expenses, that the defendant or
- 127 defendants jointly are willing to agree is the total just compensation to which the defendant is
- 128 or defendants jointly are entitled to receive for the property identified in the pending action.
- 129 (c) An offer described in Subsection (5)(a) may not be filed with the court unless
- 130 accepted or in connection with a motion for the award of litigation expenses following trial.
- 131 (d) An offer of settlement made by less than all defendants that have appeared in the
- 132 case and have not been dismissed:
- 133 (i) is not an offer under Subsection (5)(a); and
- 134 (ii) may not be a basis for awarding litigation expenses under Subsection (7).
- 135 (e) (i) Unless an offer provides a time for the offer to expire, an offer under Subsection
- 136 (5)(a) shall expire and be deemed rejected 21 days after service.
- 137 (ii) An offer that expires or is rejected under Subsection (5)(e)(i) is not admissible in
- 138 evidence and may not be referred to at trial.
- 139 (6) (a) A plaintiff who receives an offer under Subsection (5)(a) may accept the offer
- 140 by serving an acceptance of the offer, prior to its expiration, in accordance with Rule 5, Utah
- 141 Rules of Civil Procedure.
- 142 (b) Any party may file with the court an offer made under Subsection (5)(a) together
- 143 with its acceptance made under Subsection (6)(a).
- 144 (c) A plaintiff is entitled to a final judgment of condemnation as prayed for in the
- 145 complaint upon paying to the defendant or defendants, or depositing with the court clerk for the
- 146 benefit of the defendants:
- 147 (i) the amount of total just compensation agreed to in the offer accepted as described in
- 148 Subsection (6)(a); and
- 149 (ii) any interest due as provided by law.
- 150 (d) If there are multiple defendants, the court shall, upon application filed by a
- 151 defendant, determine each defendant's respective share of the settlement amount.

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

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

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

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

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

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

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

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

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

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

178 (i) the plaintiff litigation expenses; or

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

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

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

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. [~~Condemner,
227 whether a public or private body, may, at any time prior to final payment of compensation and
228 damages awarded the defendant by the court or jury, 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.~~]

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)

245 unless the mediator or arbitrator certifies at the time of filing the motion that a stay is
246 reasonably necessary to reach a resolution of the case through mediation or arbitration.
247 (b) If a stay is granted pursuant to a motion under Subsection (3)(a) and the order
248 granting the stay does not specify when the stay terminates, the mediator or arbitrator shall file
249 with the district court a motion to terminate the stay within 30 days after:
250 (i) the resolution of the dispute through mediation;
251 (ii) the issuance of a final arbitration award; or
252 (iii) a determination by the mediator or arbitrator that mediation or arbitration is not
253 appropriate.
254 (4) (a) The private property owner or displaced person may request that the mediator or
255 arbitrator authorize an additional appraisal.
256 (b) If the mediator or arbitrator determines that an additional appraisal is reasonably
257 necessary to reach a resolution of the case, the mediator or arbitrator may:
258 (i) have an additional appraisal of the property prepared by an independent appraiser
259 selected by the property owner and approved by the mediator or arbitrator; and
260 (ii) require the condemnor to pay the costs of the first additional appraisal.

Legislative Review Note
as of 2-23-12 7:42 AM

Office of Legislative Research and General Counsel