

1 **EMINENT DOMAIN AMENDMENTS**

2 2006 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Howard A. Stephenson**

5 House Sponsor: David Ure

6

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions related to eminent domain.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ requires the taking of property by a county, city, or town to be approved by the
13 legislative body of the county, city, or town;

14 ▶ requires the governing body of a political subdivision intending to take property by
15 eminent domain to provide written notice to property owners of each public meeting
16 to approve the taking and allow property owners the right to be heard regarding the
17 proposed taking;

18 ▶ modifies the duty to negotiate with a property owner and the duty to notify the
19 property owner of certain rights and limitations with respect to an anticipated
20 eminent domain action; and

21 ▶ clarifies that those duties apply to each person seeking to acquire property involving
22 the potential use of eminent domain if the property cannot be acquired in a
23 voluntary transaction.

24 **Monies Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **78-34-4**, as last amended by Chapter 161, Laws of Utah 198131 **78-34-4.5**, as enacted by Chapter 223, Laws of Utah 200432

33 *Be it enacted by the Legislature of the state of Utah:*34 Section 1. Section **78-34-4** is amended to read:35 **78-34-4. Conditions precedent to taking.**36 (1) Before property can be taken it must appear:37 ~~[(1)]~~ (a) that the use to which it is to be applied is a use authorized by law;38 ~~[(2)]~~ (b) that the taking is necessary to such use;39 ~~[(3)]~~ (c) that construction and use of all property sought to be condemned will40 commence within a reasonable time as determined by the court, after the initiation of41 proceedings under this chapter; and42 ~~[(4)]~~ (d) if already appropriated to some public use, that the public use to which it is to43 be applied is a more necessary public use.44 (2) Property may not be taken by a county, city, or town unless the legislative body of45 the county, city, or town approves the taking.46 (3) (a) As used in this Subsection (3), "governing body" means:47 (i) for a county, city, or town, the legislative body of the county, city, or town; and48 (ii) for any other political subdivision of the state, the person or body with authority to49 govern the affairs of the political subdivision.50 (b) Before voting to approve the taking of property, the governing body of each51 political subdivision intending to take property shall provide written notice to each owner of52 property to be taken of each public meeting of the political subdivision's governing body at53 which a vote on the proposed taking is expected to occur and allow the property owner the54 opportunity to be heard on the proposed taking.55 Section 2. Section **78-34-4.5** is amended to read:56 **78-34-4.5. Negotiation and disclosure required before eminent domain action.**57 Each person who seeks to acquire property by eminent domain or who intends to use58 eminent domain to acquire property if the property cannot be acquired in a voluntary

59 transaction shall:

60 (1) before voting to approve the taking of property or initiating an eminent domain
61 action, make a reasonable effort to negotiate with the property owner for the purchase of the
62 property; and

63 (2) as early in the negotiation process under Subsection (1) as practicable but no later
64 than 14 days before [~~the~~] voting to approve the taking of property or filing [~~of~~] an eminent
65 domain action, unless the court for good cause allows a shorter period before filing:

66 (a) advise the property owner of the owner's rights to mediation and arbitration under
67 Section 78-34-21, including the name and current telephone number of the property rights
68 ombudsman, established in Section 63-34-13; and

69 (b) provide the property owner a written statement explaining that oral representations
70 or promises made during the negotiation process are not binding upon the person seeking to
71 acquire the property by eminent domain.

Legislative Review Note

as of 10-18-05 11:27 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel