

1 STATE AND LOCAL GOVERNMENTAL  
2 ENTITIES CONDEMNATION RIGHTS

3 REVISED

4 2001 GENERAL SESSION

5 STATE OF UTAH

6 Sponsor: David Ure

7 This act modifies the Judicial Code by allowing an award of attorney's fees in certain  
8 eminent domain cases.

9 This act affects sections of Utah Code Annotated 1953 as follows:

10 AMENDS:

11 78-34-10, Utah Code Annotated 1953

12 *Be it enacted by the Legislature of the state of Utah:*

13 Section 1. Section 78-34-10 is amended to read:

14 78-34-10. Compensation and damages -- How assessed.

15 (1) The court, jury, or referee [~~must~~] shall hear such legal evidence as may be offered by  
16 any of the parties to the proceedings, and [~~thereupon must~~] then shall ascertain and assess:

17 [(+) (a) the value of the property sought to be condemned and all improvements thereon  
18 appertaining to the realty, and of each and every separate estate or interest therein; and if it consists  
19 of different parcels, the value of each parcel and of each estate or interest therein shall be  
20 separately assessed;

21 [(2) (b) if the property sought to be condemned constitutes only a part of a larger parcel,  
22 the damages which will accrue to the portion not sought to be condemned by reason of its  
23 severance from the portion sought to be condemned and the construction of the improvement in  
24 the manner proposed by the plaintiff;

25 [(3) (c) if the property, though no part thereof is taken, will be damaged by the  
26 construction of the proposed improvement, the amount of [~~such~~] the damages;

27 [(4) (d) separately, how much the portion not sought to be condemned, and each estate



28 or interest therein, will be benefited, if at all, by the construction of the improvement proposed by  
29 the plaintiff. If the benefit shall be equal to the damages assessed under [~~Subdivision (2) of this~~  
30 ~~section~~] Subsection (1)(b), the owner of the parcel [~~shall~~] may not be allowed [~~no~~] compensation  
31 except the value of the portion taken; but if the benefit [~~shall be~~] is less than the damages so  
32 assessed, the former shall be deducted from the latter, and the remainder shall be the only damages  
33 allowed in addition to the value of the portion taken; and

34 [~~(5)~~] (e) as far as practicable compensation [~~must~~] shall be assessed for each source of  
35 damages separately.

36 (2) (a) A private property owner whose property is being acquired by eminent domain is  
37 entitled to reasonable attorneys fees if the trier of fact returns a special verdict that the entity that  
38 is exercising eminent domain made an offer to purchase the property that was less than 80% of the  
39 fair market value of the property.

40 (b) The offer under Subsection (2)(a) includes the value of any proposed improvements  
41 to the remaining property.

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**Legislative Review Note**  
**as of 2-7-01 3:40 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**