

EMINENT DOMAIN AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Ben C. Ferry

LONG TITLE

General Description:

This bill modifies provisions relating to eminent domain.

Highlighted Provisions:

This bill:

- ▶ authorizes shareholders in a mutual stock water company to appear and defend in a condemnation action involving the taking of the company or company property; and
- ▶ adds to the amount of damages to be assessed in a condemnation action:
 - the value of water carrying facilities damaged or impaired by the condemnation of water rights; and
 - the value of crops on land that is condemned.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78-34-7, Utah Code Annotated 1953

78-34-10, Utah Code Annotated 1953

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

Section 1. Section **78-34-7** is amended to read:



28 **78-34-7. Who may appear and defend.**

29 All persons in occupation of, or having or claiming an interest in, any of the property
30 described in the complaint, or in the damages for the taking thereof, though not named,
31 including shareholders in a mutual stock water company in a proceeding involving the taking
32 of the company or property belonging to the company, may appear, plead and defend, each in
33 respect to his own property or interest, or that claimed by him, in the same manner as if named
34 in the complaint.

35 Section 2. Section **78-34-10** is amended to read:

36 **78-34-10. Compensation and damages -- How assessed.**

37 The court, jury or referee must hear such legal evidence as may be offered by any of the
38 parties to the proceedings, and thereupon must ascertain and assess:

39 (1) the value of the property sought to be condemned and all improvements thereon
40 appertaining to the realty, and of each and every separate estate or interest therein; and if it
41 consists of different parcels, the value of each parcel and of each estate or interest therein shall
42 be separately assessed;

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

47 (3) if the property, though no part thereof is taken, will be damaged by the construction
48 of the proposed improvement, the amount of such damages;

49 (4) separately, how much the portion not sought to be condemned, and each estate or
50 interest therein, will be benefited, if at all, by the construction of the improvement proposed by
51 the plaintiff. If the benefit shall be equal to the damages assessed under Subdivision (2) of this
52 section, the owner of the parcel shall be allowed no compensation except the value of the
53 portion taken; but if the benefit shall be less than the damages so assessed, the former shall be
54 deducted from the latter, and the remainder shall be the only damages allowed in addition to
55 the value of the portion taken;

56 (5) if the property sought to be condemned consists of water rights or part of a water
57 delivery system or both, and the taking will cause present or future damage to or impairment of
58 the water delivery system not being taken, including impairment of the system's carrying

59 capacity, an amount to compensate for the damage or impairment;
60 (6) if land on which crops are growing at the time of service of summons is sought to
61 be condemned, the value that those crops would have had after being harvested, taking into
62 account the expenses that would have been incurred cultivating and harvesting the crops; and
63 [~~5~~] (7) as far as practicable compensation must be assessed for each source of
64 damages separately.

Legislative Review Note
as of 1-30-04 10:43 AM

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

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0131

Eminent Domain Amendments

09-Feb-04

12:52 PM

State Impact

No fiscal impact.

Individual and Business Impact

The fiscal impact is not determinable.

Office of the Legislative Fiscal Analyst