

EMINENT DOMAIN REQUIREMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David Ure

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to the acquisition of property by eminent domain.

Highlighted Provisions:

This bill:

- requires the court to award court costs and a reasonable attorney's fee to a property owner if the court award of compensation and damages exceeds the plaintiff's highest offer by more than ten percent; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78-34-10, as last amended by Chapter 101, Laws of Utah 2004

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

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

78-34-10. Compensation and damages -- How assessed -- Award of court costs and attorney's fee in certain circumstances.



(1) The court, jury, or referee ~~[must]~~ shall hear ~~[such]~~ the legal evidence ~~[as may be]~~ offered by ~~[any of]~~ the parties to the proceedings~~[-and thereupon must]~~.

(2) (a) Based upon the evidence, the court, jury, or referee shall ascertain and assess:

~~[(1)]~~ (i) subject to Subsection(2)(b), the value of the property sought to be condemned ~~[and], all improvements [thereon] on the property appertaining to the realty, and [of] each [and every] separate estate or interest [therein; and if it consists of different parcels, the value of each parcel and of each estate or interest therein shall be separately assessed] in the property;~~

~~[(2)]~~ (ii) if the property sought to be condemned constitutes only a part of a larger parcel, the damages ~~[which]~~ that will accrue to the portion not sought to be condemned ~~[by reason]~~ because of its severance from the portion sought to be condemned and the construction of the improvement in the manner proposed by the plaintiff;

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

~~[(4)]~~ (iv) separately, how much the portion not sought to be condemned, and each estate or interest ~~[therein]~~ in that portion, will be benefited, if at all, by the construction of the improvement proposed by the plaintiff~~[-If the benefit shall be equal to the damages assessed under Subdivision (2) of this section, the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefit shall be less than the damages so assessed, the former shall be deducted from the latter, and the remainder shall be the only damages allowed in addition to the value of the portion taken],~~ subject to Subsection (2)(c);

~~[(5)]~~ (v) if the property sought to be condemned consists of water rights or part of a water delivery system or both, and the taking will cause present or future damage to or impairment of the water delivery system not being taken, including impairment of the system's carrying capacity, an amount to compensate for the damage or impairment; and

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

(b) If the property sought to be condemned consists of different parcels, the value of each parcel and of each estate or interest in the parcel shall be assessed separately.

(c) (i) If the benefit assessed under Subsection (2)(a)(iv) is equal to the damages

59 assessed under Subsection (2)(a)(ii), no compensation may be allowed except the value of the
60 portion taken.

61 (ii) If the benefit assessed under Subsection (2)(a)(iv) is less than the damages assessed
62 under Subsection (2)(a)(ii), the amount of the benefit assessed shall be deducted from the
63 amount of damages assessed, and the difference shall be the only damages allowed under
64 Subsection (2)(a)(iv) in addition to the value of the portion taken.

65 ~~[(7) as]~~ (d) As far as practicable, compensation ~~[must]~~ shall be assessed for each
66 source of damages separately.

67 (3) If the total amount of compensation and damages awarded by the court exceeds the
68 plaintiff's highest offer made before the commencement of the eminent domain action by more
69 than ten percent, the court shall award the property owner the owner's court costs and
70 reasonable attorney's fee.

Legislative Review Note

as of 8-16-05 10:29 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

Fiscal Note
Bill Number HB0275

Eminent Domain Requirements*02-Feb-06**4:54 PM*

State Impact

HB 275 will require \$21,000,000 in additional Transportation Fund annually. HB 275 will also require \$122,300 in FY07 and \$118,800 in FY08 in ongoing General Fund for the Attorney General. Passage of this bill will have a significant impact on local governments.

	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2007</u>	<u>FY 2008</u>
	<u>Approp.</u>	<u>Approp.</u>	<u>Revenue</u>	<u>Revenue</u>
General Fund	\$122,300	\$118,000	\$0	\$0
Transportation Fund	\$21,000,000	\$21,000,000	\$0	\$0
TOTAL	<u>\$21,122,300</u>	<u>\$21,118,000</u>	<u>\$0</u>	<u>\$0</u>

Individual and Business Impact

Fiscal impacts on businesses and individuals will vary.

Office of the Legislative Fiscal Analyst