

EMINENT DOMAIN AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Roger E. Barrus

Senate Sponsor: _____

LONG TITLE**General Description:**

This bill modifies a provision relating to eminent domain.

Highlighted Provisions:

This bill:

- ▶ modifies a provision requiring damages to be assessed on behalf of a property owner, part of whose property is being acquired by eminent domain, to provide that damages accruing to the remaining property due to construction of the improvement are to be assessed whether or not the construction actually occurs on the portion being taken; 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.

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]~~, based on the evidence, shall ascertain and assess:

(1) the value of the property sought to be condemned and all improvements thereon 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;

(2) 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]~~:

(a) because of its severance from the portion sought to be condemned; and

(b) because of the construction of the improvement in the manner proposed by the plaintiff, whether or not the improvement is constructed on the portion sought to be condemned;

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

(4) separately, how much the portion not sought to be condemned, and each estate or interest therein, 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]~~ Subsection (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;

(5) 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;

(6) 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

(7) as far as practicable compensation must be assessed for each source of damages

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Legislative Review Note
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Office of Legislative Research and General Counsel