

EMINENT DOMAIN AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill amends provisions of the eminent domain code.

Highlighted Provisions:

This bill:

- ▶ amends condemnation notice requirements for a municipality and project entity;
- ▶ amends provisions relating to an arbitration or mediation facilitated by the Office of the Property Rights Ombudsman;
- ▶ authorizes a private property owner to request a written advisory opinion to determine if a condemning entity has occupied the owner's property;
- ▶ amends the public uses for which the right of eminent domain may be exercised;
- ▶ requires a political subdivision or other person exercising the right of eminent domain to provide a written statement of certain disclosures to a private property owner; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 10-8-2**, as last amended by Laws of Utah 2013, Chapter 445
- 11-13-314**, as last amended by Laws of Utah 2008, Chapter 3
- 13-43-204**, as last amended by Laws of Utah 2011, Chapter 385
- 13-43-205**, as last amended by Laws of Utah 2013, Chapter 200
- 13-43-206**, as last amended by Laws of Utah 2011, Chapter 47
- 78B-6-501**, as last amended by Laws of Utah 2013, Chapter 327
- 78B-6-505**, as last amended by Laws of Utah 2013, Chapter 327

33 **78B-6-522**, as last amended by Laws of Utah 2011, Chapter 385

34

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

36 Section 1. Section **10-8-2** is amended to read:

37 **10-8-2. Appropriations -- Acquisition and disposal of property -- Municipal**

38 **authority -- Corporate purpose -- Procedure -- Notice of intent to acquire real property.**

39 (1) (a) A municipal legislative body may:

40 (i) appropriate money for corporate purposes only;

41 (ii) provide for payment of debts and expenses of the corporation;

42 (iii) subject to Subsections (4) and (5), purchase, receive, hold, sell, lease, convey, and
 43 dispose of real and personal property for the benefit of the municipality, whether the property is
 44 within or without the municipality's corporate boundaries, if the action is in the public interest
 45 and complies with other law;

46 (iv) improve, protect, and do any other thing in relation to this property that an
 47 individual could do; and

48 (v) subject to Subsection (2) and after first holding a public hearing, authorize
 49 municipal services or other nonmonetary assistance to be provided to or waive fees required to
 50 be paid by a nonprofit entity, whether or not the municipality receives consideration in return.

51 (b) A municipality may:

52 (i) furnish all necessary local public services within the municipality;

53 (ii) purchase, hire, construct, own, maintain and operate, or lease public utilities
 54 located and operating within and operated by the municipality; and

55 (iii) subject to Subsection (1)(c), acquire by eminent domain, or otherwise, property
 56 located inside or outside the corporate limits of the municipality and necessary for any of the
 57 purposes stated in Subsections (1)(b)(i) and (ii), subject to restrictions imposed by Title 78B,
 58 Chapter 6, Part 5, Eminent Domain, and general law for the protection of other communities.

59 (c) Each municipality that intends to acquire property by eminent domain under
 60 Subsection (1)(b) shall ~~upon the first contact with the owner of the property sought to be~~
 61 ~~acquired, deliver to the owner a copy of a booklet or other materials provided by the Office of~~
 62 ~~the Property Rights Ombudsman, created under Section 13-43-201, dealing with the property~~
 63 ~~owner's rights in an eminent domain proceeding] comply with the requirements of Section~~

64 78B-6-505.

65 (d) Subsection (1)(b) may not be construed to diminish any other authority a
66 municipality may claim to have under the law to acquire by eminent domain property located
67 inside or outside the municipality.

68 (2) (a) Services or assistance provided pursuant to Subsection (1)(a)(v) is not subject to
69 the provisions of Subsection (3).

70 (b) The total amount of services or other nonmonetary assistance provided or fees
71 waived under Subsection (1)(a)(v) in any given fiscal year may not exceed 1% of the
72 municipality's budget for that fiscal year.

73 (3) It is considered a corporate purpose to appropriate money for any purpose that, in
74 the judgment of the municipal legislative body, provides for the safety, health, prosperity,
75 moral well-being, peace, order, comfort, or convenience of the inhabitants of the municipality
76 subject to the following:

77 (a) The net value received for any money appropriated shall be measured on a
78 project-by-project basis over the life of the project.

79 (b) The criteria for a determination under this Subsection (3) shall be established by the
80 municipality's legislative body. A determination of value received, made by the municipality's
81 legislative body, shall be presumed valid unless it can be shown that the determination was
82 arbitrary, capricious, or illegal.

83 (c) The municipality may consider intangible benefits received by the municipality in
84 determining net value received.

85 (d) (i) Prior to the municipal legislative body making any decision to appropriate any
86 funds for a corporate purpose under this section, a public hearing shall be held.

87 (ii) Notice of the hearing described in Subsection (3)(d)(i) shall be published:

88 (A) (I) in a newspaper of general circulation at least 14 days before the date of the
89 hearing; or

90 (II) if there is no newspaper of general circulation, by posting notice in at least three
91 conspicuous places within the municipality for the same time period; and

92 (B) on the Utah Public Notice Website created in Section 63F-1-701, at least 14 days
93 before the date of the hearing.

94 (e) A study shall be performed before notice of the public hearing is given and shall be

95 made available at the municipality for review by interested parties at least 14 days immediately
96 prior to the public hearing, setting forth an analysis and demonstrating the purpose for the
97 appropriation. In making the study, the following factors shall be considered:

98 (i) what identified benefit the municipality will receive in return for any money or
99 resources appropriated;

100 (ii) the municipality's purpose for the appropriation, including an analysis of the way
101 the appropriation will be used to enhance the safety, health, prosperity, moral well-being,
102 peace, order, comfort, or convenience of the inhabitants of the municipality; and

103 (iii) whether the appropriation is necessary and appropriate to accomplish the
104 reasonable goals and objectives of the municipality in the area of economic development, job
105 creation, affordable housing, blight elimination, job preservation, the preservation of historic
106 structures and property, and any other public purpose.

107 (f) (i) An appeal may be taken from a final decision of the municipal legislative body,
108 to make an appropriation.

109 (ii) The appeal shall be filed within 30 days after the date of that decision, to the
110 district court.

111 (iii) Any appeal shall be based on the record of the proceedings before the legislative
112 body.

113 (iv) A decision of the municipal legislative body shall be presumed to be valid unless
114 the appealing party shows that the decision was arbitrary, capricious, or illegal.

115 (g) The provisions of this Subsection (3) apply only to those appropriations made after
116 May 6, 2002.

117 (h) This section applies only to appropriations not otherwise approved pursuant to Title
118 10, Chapter 5, Uniform Fiscal Procedures Act for Utah Towns, or Title 10, Chapter 6, Uniform
119 Fiscal Procedures Act for Utah Cities.

120 (4) (a) Before a municipality may dispose of a significant parcel of real property, the
121 municipality shall:

122 (i) provide reasonable notice of the proposed disposition at least 14 days before the
123 opportunity for public comment under Subsection (4)(a)(ii); and

124 (ii) allow an opportunity for public comment on the proposed disposition.

125 (b) Each municipality shall, by ordinance, define what constitutes:

- 126 (i) a significant parcel of real property for purposes of Subsection (4)(a); and
127 (ii) reasonable notice for purposes of Subsection (4)(a)(i).
- 128 (5) (a) Except as provided in Subsection (5)(d), each municipality intending to acquire
129 real property for the purpose of expanding the municipality's infrastructure or other facilities
130 used for providing services that the municipality offers or intends to offer shall provide written
131 notice, as provided in this Subsection (5), of its intent to acquire the property if:
- 132 (i) the property is located:
- 133 (A) outside the boundaries of the municipality; and
134 (B) in a county of the first or second class; and
- 135 (ii) the intended use of the property is contrary to:
- 136 (A) the anticipated use of the property under the general plan of the county in whose
137 unincorporated area or the municipality in whose boundaries the property is located; or
138 (B) the property's current zoning designation.
- 139 (b) Each notice under Subsection (5)(a) shall:
- 140 (i) indicate that the municipality intends to acquire real property;
141 (ii) identify the real property; and
142 (iii) be sent to:
- 143 (A) each county in whose unincorporated area and each municipality in whose
144 boundaries the property is located; and
145 (B) each affected entity.
- 146 (c) A notice under this Subsection (5) is a protected record as provided in Subsection
147 63G-2-305(8).
- 148 (d) (i) The notice requirement of Subsection (5)(a) does not apply if the municipality
149 previously provided notice under Section 10-9a-203 identifying the general location within the
150 municipality or unincorporated part of the county where the property to be acquired is located.
- 151 (ii) If a municipality is not required to comply with the notice requirement of
152 Subsection (5)(a) because of application of Subsection (5)(d)(i), the municipality shall provide
153 the notice specified in Subsection (5)(a) as soon as practicable after its acquisition of the real
154 property.
- 155 Section 2. Section **11-13-314** is amended to read:
- 156 **11-13-314. Eminent domain authority of certain commercial project entities.**

157 (1) (a) Subject to Subsection (2), a commercial project entity that existed as a project
 158 entity before January 1, 1980 may, with respect to a project or facilities providing additional
 159 project capacity in which the commercial project entity has an interest, acquire property within
 160 the state through eminent domain, subject to restrictions imposed by Title 78B, Chapter 6, Part
 161 5, Eminent Domain, and general law for the protection of other communities.

162 (b) Subsection (1)(a) may not be construed to:

163 (i) give a project entity the authority to acquire water rights by eminent domain; or

164 (ii) diminish any other authority a project entity may claim to have under the law to
 165 acquire property by eminent domain.

166 (2) Each project entity that intends to acquire property by eminent domain under
 167 Subsection (1)(a) shall ~~upon the first contact with the owner of the property sought to be~~
 168 ~~acquired, deliver to the owner a copy of a booklet or other materials provided by the property~~
 169 ~~rights ombudsman, created under Section 13-43-201, dealing with the property owner's rights~~
 170 ~~in an eminent domain proceeding] comply with the requirements of Section 78B-6-505.~~

171 Section 3. Section **13-43-204** is amended to read:

172 **13-43-204. Office of the Property Rights Ombudsman -- Arbitration or mediation**
 173 **of disputes.**

174 (1) If requested by the private property owner and if otherwise appropriate, the Office
 175 of the Property Rights Ombudsman shall mediate, or conduct or arrange arbitration for, a
 176 dispute between the owner and a government entity or other type of condemning entity:

177 (a) involving taking or eminent domain issues;

178 (b) involved in an action for eminent domain under Title 78B, Chapter 6, Part 5,
 179 Eminent Domain; or

180 (c) involving relocation assistance under Title 57, Chapter 12, Utah Relocation
 181 Assistance Act.

182 (2) If arbitration or mediation is requested by a private property owner under this
 183 section, Section 57-12-14 or 78B-6-522, and arranged by the Office of the Property Rights
 184 Ombudsman, the government entity or condemning entity shall participate in the mediation or
 185 arbitration as if the matter were ordered to mediation or arbitration by a court.

186 (3) (a) (i) In conducting or arranging for arbitration under Subsection (1), the Office of
 187 the Property Rights Ombudsman shall follow the procedures and requirements of Title 78B,

188 Chapter 11, Utah Uniform Arbitration Act.

189 (ii) In applying Title 78B, Chapter 11, Utah Uniform Arbitration Act, the arbitrator and
190 parties shall treat the matter as if:

191 (A) it were ordered to arbitration by a court; and

192 (B) the Office of the Property Rights Ombudsman or other arbitrator chosen as
193 provided for in this section was appointed as arbitrator by the court.

194 (iii) For the purpose of an arbitration conducted under this section, if the dispute to be
195 arbitrated is not already the subject of legal action, the district court having jurisdiction over
196 the county where the private property involved in the dispute is located is the court referred to
197 in Title 78B, Chapter 11, Utah Uniform Arbitration Act.

198 (iv) An arbitration award under this chapter may not be vacated under the provisions of
199 Subsection 78B-11-124(1)(e) because of the lack of an arbitration agreement between the
200 parties.

201 (b) The Office of the Property Rights Ombudsman shall issue a written statement
202 declining to mediate, arbitrate, or to appoint an arbitrator when, in the opinion of the Office of
203 the Property Rights Ombudsman:

204 (i) the issues are not ripe for review;

205 (ii) assuming the alleged facts are true, no cause of action exists under United States or
206 Utah law;

207 (iii) all issues raised are beyond the scope of the Office of the Property Rights
208 Ombudsman's statutory duty to review; or

209 (iv) the mediation or arbitration is otherwise not appropriate.

210 (c) (i) The Office of the Property Rights Ombudsman shall appoint another person to
211 arbitrate a dispute when:

212 (A) either party objects to the Office of the Property Rights Ombudsman serving as the
213 arbitrator and agrees to pay for the services of another arbitrator;

214 (B) the Office of the Property Rights Ombudsman declines to arbitrate the dispute for a
215 reason other than those stated in Subsection (3)(b) and one or both parties are willing to pay for
216 the services of another arbitrator; or

217 (C) the Office of the Property Rights Ombudsman determines that it is appropriate to
218 appoint another person to arbitrate the dispute with no charge to the parties for the services of

219 the appointed arbitrator.

220 (ii) In appointing another person to arbitrate a dispute, the Office of the Property Rights
221 Ombudsman shall appoint an arbitrator who is agreeable to:

222 (A) both parties; or

223 (B) the Office of the Property Rights Ombudsman and the party paying for the
224 arbitrator.

225 (iii) The Office of the Property Rights Ombudsman may, on its own initiative or upon
226 agreement of both parties, appoint a panel of arbitrators to conduct the arbitration.

227 (iv) The Department of Commerce may pay an arbitrator per diem and reimburse
228 expenses incurred in the performance of the arbitrator's duties at the rates established by the
229 Division of Finance under Sections 63A-3-106 and 63A-3-107.

230 (d) In arbitrating a dispute, the arbitrator shall apply the relevant statutes, case law,
231 regulations, and rules of Utah and the United States in conducting the arbitration and in
232 determining the award.

233 (e) The property owner and government entity, or other condemning entity, may agree
234 in advance of arbitration that the arbitration is binding and that no de novo review may occur.

235 (f) Arbitration by or through the Office of the Property Rights Ombudsman is not
236 necessary before bringing legal action to adjudicate any claim.

237 (g) The lack of arbitration by or through the Office of the Property Rights Ombudsman
238 does not constitute, and may not be interpreted as constituting, a failure to exhaust available
239 administrative remedies or as a bar to bringing legal action.

240 (h) Arbitration under this section is not subject to Title 63G, Chapter 4, Administrative
241 Procedures Act, or Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act.

242 (i) Within 30 days after an arbitrator issues a final award, and except as provided in
243 Subsection (3)(e), any party to the arbitration may submit the dispute, the award, or any issue
244 upon which the award is based, to the district court for review by trial de novo.

245 (4) The filing with the Office of the Property Rights Ombudsman of a request for
246 mediation or arbitration of a constitutional taking issue does not stay ~~[any]~~:

247 (a) a county or municipal land use decision~~[, including the decision of a board of~~
248 ~~adjustment.]~~;

249 (b) a land use appeal authority decision; or

250 (c) the occupancy of the property.

251 (5) ~~[Members]~~ A member of the Office of the Property Rights Ombudsman, or an
 252 arbitrator appointed by the office, may not be compelled to testify in a civil action filed
 253 concerning the subject matter of any review, mediation, or arbitration by the Office of the
 254 Property Rights Ombudsman.

255 Section 4. Section **13-43-205** is amended to read:

256 **13-43-205. Advisory opinion.**

257 (1) A local government, private entity, or a potentially aggrieved person may, in
 258 accordance with Section 13-43-206, request a written advisory opinion:

259 ~~[(1)]~~ (a) from a neutral third party to determine compliance with:

260 ~~[(a)]~~ (i) Section 10-9a-505.5 and Sections 10-9a-507 through 10-9a-511;

261 ~~[(b)]~~ (ii) Section 17-27a-505.5 and Sections 17-27a-506 through 17-27a-510; and

262 ~~[(c)]~~ (iii) Title 11, Chapter 36a, Impact Fees Act; and

263 ~~[(2)-(a)]~~ (b) at any time before:

264 (i) a final decision on a land use application by a local appeal authority under Title 11,
 265 Chapter 36a, Impact Fees Act, or Section 10-9a-708 or 17-27a-708;

266 ~~[(b) at any time before]~~ (ii) the deadline for filing an appeal with the district court
 267 under Title 11, Chapter 36a, Impact Fees Act, or Section 10-9a-801 or 17-27a-801, if no local
 268 appeal authority is designated to hear the issue that is the subject of the request for an advisory
 269 opinion; or

270 ~~[(c) at any time prior to]~~ (iii) the enactment of an impact fee, if the request for an
 271 advisory opinion is a request to review and comment on a proposed impact fee facilities plan or
 272 a proposed impact fee analysis as defined in Section 11-36a-102.

273 (2) A private property owner may, in accordance with Section 13-43-206, request a
 274 written advisory opinion from a neutral third party to determine if a condemning entity:

275 (a) is in occupancy of the owner's property;

276 (b) is occupying the property:

277 (i) for a public use authorized by law; and

278 (ii) without colorable legal or equitable authority; and

279 (c) continues to occupy the property without the owner's consent, the occupancy would
 280 constitute a taking of private property for a public use without just compensation.

281 (3) An advisory opinion issued under Subsection (2) may justify an award of attorney
282 fees against a condemning entity in accordance with Section 13-43-206 only if the court finds
283 that the condemning entity:

284 (a) does not have a colorable claim or defense for the entity's actions; and

285 (b) continued occupancy without payment of just compensation and in disregard of the
286 advisory opinion.

287 Section 5. Section **13-43-206** is amended to read:

288 **13-43-206. Advisory opinion -- Process.**

289 (1) A request for an advisory opinion under Section 13-43-205 shall be:

290 (a) filed with the Office of the Property Rights Ombudsman; and

291 (b) accompanied by a filing fee of \$150.

292 (2) The Office of the Property Rights Ombudsman may establish policies providing for
293 partial fee waivers for a person who is financially unable to pay the entire fee.

294 (3) A person requesting an advisory opinion need not exhaust administrative remedies,
295 including remedies described under Section 10-9a-801 or 17-27a-801, before requesting an
296 advisory opinion.

297 (4) The Office of the Property Rights Ombudsman shall:

298 (a) deliver notice of the request to opposing parties indicated in the request;

299 (b) inquire of all parties if there are other necessary parties to the dispute; and

300 (c) deliver notice to all necessary parties.

301 (5) If a governmental entity is an opposing party, the Office of the Property Rights
302 Ombudsman shall deliver the request in the manner provided for in Section 63G-7-401.

303 (6) (a) The Office of the Property Rights Ombudsman shall promptly determine if the
304 parties can agree to a neutral third party to issue an advisory opinion.

305 (b) If no agreement can be reached within four business days after notice is delivered
306 pursuant to Subsections (4) and (5), the Office of the Property Rights Ombudsman shall
307 appoint a neutral third party to issue an advisory opinion.

308 (7) All parties that are the subject of the request for advisory opinion shall:

309 (a) share equally in the cost of the advisory opinion; and

310 (b) provide financial assurance for payment that the neutral third party requires.

311 (8) The neutral third party shall comply with the provisions of Section 78B-11-109,

312 and shall promptly:

313 (a) seek a response from all necessary parties to the issues raised in the request for
314 advisory opinion;

315 (b) investigate and consider all responses; and

316 (c) issue a written advisory opinion within 15 business days after the appointment of
317 the neutral third party under Subsection (6)(b), unless:

318 (i) the parties agree to extend the deadline; or

319 (ii) the neutral third party determines that the matter is complex and requires additional
320 time to render an opinion, which may not exceed 30 calendar days.

321 (9) An advisory opinion shall include a statement of the facts and law supporting the
322 opinion's conclusions.

323 (10) (a) Copies of any advisory opinion issued by the Office of the Property Rights
324 Ombudsman shall be delivered as soon as practicable to all necessary parties.

325 (b) A copy of the advisory opinion shall be delivered to the government entity in the
326 manner provided for in Section 63G-7-401.

327 (11) An advisory opinion issued by the Office of the Property Rights Ombudsman is
328 not binding on any party to, nor admissible as evidence in, a dispute involving land use law
329 except as provided in Subsection (12).

330 (12) (a) Subject to Subsection (12)(d), if the same issue that is the subject of an
331 advisory opinion is listed as a cause of action in litigation, and that cause of action is litigated
332 on the same facts and circumstances and is resolved consistent with the advisory opinion:

333 (i) the substantially prevailing party on that cause of action:

334 (A) may collect reasonable attorney fees and court costs pertaining to the development
335 of that cause of action from the date of the delivery of the advisory opinion to the date of the
336 court's resolution; and

337 (B) shall be refunded an impact fee held to be in violation of Title 11, Chapter 36a,
338 Impact Fees Act, based on the difference between the impact fee paid and what the impact fee
339 should have been if the government entity had correctly calculated the impact fee; and

340 (ii) in accordance with Subsection (12)(b), a government entity shall refund an impact
341 fee held to be in violation of Title 11, Chapter 36a, Impact Fees Act, to the person who was in
342 record title of the property on the day on which the impact fee for the property was paid if:

343 (A) the impact fee was paid on or after the day on which the advisory opinion on the
344 impact fee was issued but before the day on which the final court ruling on the impact fee is
345 issued; and

346 (B) the person described in Subsection (12)(a)(ii) requests the impact fee refund from
347 the government entity within 30 days after the day on which the court issued the final ruling on
348 the impact fee.

349 (b) A government entity subject to Subsection (12)(a)(ii) shall refund the impact fee
350 based on the difference between the impact fee paid and what the impact fee should have been
351 if the government entity had correctly calculated the impact fee.

352 (c) Nothing in this Subsection (12) is intended to create any new cause of action under
353 land use law.

354 (d) Subsection (12)(a) does not apply unless the resolution described in Subsection
355 (12)(a) is final.

356 (13) Unless filed by the local government, a request for an advisory opinion under
357 Section 13-43-205 does not stay the progress of a land use application, ~~or~~ the effect of a land
358 use decision~~[-]~~, or the condemning entity's occupancy of a property.

359 Section 6. Section **78B-6-501** is amended to read:

360 **78B-6-501. Eminent domain -- Uses for which right may be exercised.**

361 Subject to the provisions of this part, the right of eminent domain may be exercised on
362 behalf of the following public uses:

363 (1) all public uses authorized by the federal government;

364 (2) public buildings and grounds for the use of the state, and all other public uses
365 authorized by the Legislature;

366 (3) (a) public buildings and grounds for the use of any county, city, town, or board of
367 education;

368 (b) reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water or
369 sewage, including to or from a development, for the use of the inhabitants of any county, city,
370 or town, or for the draining of any county, city, or town;

371 (c) the raising of the banks of streams, removing obstructions from streams, and
372 widening, deepening, or straightening their channels;

373 (d) bicycle paths and sidewalks adjacent to paved roads;

374 (e) roads, byroads, streets, and alleys for public vehicular use, including for access to a
375 development, excluding trails, paths, or other ways for walking, hiking, bicycling, equestrian
376 use, or other recreational uses, or whose primary purpose is as a foot path, equestrian trail,
377 bicycle path, or walkway; and

378 (f) all other public uses for the benefit of any county, city, or town, or its inhabitants;

379 (4) wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank
380 and turnpike roads, roads for transportation by traction engines or road locomotives, roads for
381 logging or lumbering purposes, and railroads and street railways for public transportation;

382 (5) reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and pipes
383 for the supplying of persons, mines, mills, smelters or other works for the reduction of ores,
384 with water for domestic or other uses, or for irrigation purposes, or for the draining and
385 reclaiming of lands, [~~or for the floating of logs and lumber on streams not navigable,~~] or for
386 solar evaporation ponds and other facilities for the recovery of minerals in solution;

387 (6) (a) roads, railroads, tramways, tunnels, ditches, flumes, pipes, and dumping places
388 to access or facilitate the milling, smelting, or other reduction of ores, or the working of mines,
389 quarries, coal mines, or mineral deposits including oil, gas, and minerals in solution;

390 (b) outlets, natural or otherwise, for the deposit or conduct of tailings, refuse or water
391 from mills, smelters or other works for the reduction of ores, or from mines, quarries, coal
392 mines or mineral deposits including minerals in solution;

393 (c) mill dams;

394 (d) gas, oil or coal pipelines, tanks or reservoirs, including any subsurface stratum or
395 formation in any land for the underground storage of natural gas, and in connection with that,
396 any other interests in property which may be required to adequately examine, prepare,
397 maintain, and operate underground natural gas storage facilities;

398 (e) solar evaporation ponds and other facilities for the recovery of minerals in solution;
399 and

400 (f) any occupancy in common by the owners or possessors of different mines, quarries,
401 coal mines, mineral deposits, mills, smelters, or other places for the reduction of ores, or any
402 place for the flow, deposit or conduct of tailings or refuse matter;

403 (7) byroads leading from a highway to:

404 (a) a residence; or

- 405 (b) a farm;
- 406 (8) [~~telegraph,~~] telephone, electric light and electric power lines, [~~and~~] sites for electric
407 light and power plants, or sites for the transmission of broadcast signals from a station licensed
408 by the Federal Communications Commission in accordance with 47 C.F.R Part 73 and that
409 provides emergency broadcast services;
- 410 (9) sewage service for:
- 411 (a) a city, a town, or any settlement of not fewer than 10 families;
- 412 (b) a public building belonging to the state; or
- 413 (c) a college or university;
- 414 (10) canals, reservoirs, dams, ditches, flumes, aqueducts, and pipes for supplying and
415 storing water for the operation of machinery for the purpose of generating and transmitting
416 electricity for power, light or heat;
- 417 (11) cemeteries and public parks, except for a park whose primary use is:
- 418 (a) as a trail, path, or other way for walking, hiking, bicycling, or equestrian use; or
- 419 (b) to connect other trails, paths, or other ways for walking, hiking, bicycling, or
420 equestrian use;
- 421 (12) pipelines for the purpose of conducting any and all liquids connected with the
422 manufacture of beet sugar; and
- 423 (13) sites for mills, smelters or other works for the reduction of ores and necessary to
424 their successful operation, including the right to take lands for the discharge and natural
425 distribution of smoke, fumes, and dust, produced by the operation of works, provided that the
426 powers granted by this section may not be exercised in any county where the population
427 exceeds 20,000, or within one mile of the limits of any city or incorporated town nor unless the
428 proposed condemner has the right to operate by purchase, option to purchase or easement, at
429 least 75% in value of land acreage owned by persons or corporations situated within a radius of
430 four miles from the mill, smelter or other works for the reduction of ores; nor beyond the limits
431 of the four-mile radius; nor as to lands covered by contracts, easements, or agreements existing
432 between the condemner and the owner of land within the limit and providing for the operation
433 of such mill, smelter, or other works for the reduction of ores; nor until an action shall have
434 been commenced to restrain the operation of such mill, smelter, or other works for the
435 reduction of ores.

436 Section 7. Section **78B-6-505** is amended to read:

437 **78B-6-505. Negotiation and disclosure required before filing an eminent domain**
438 **action.**

439 (1) A political subdivision of the state that seeks to acquire property by eminent
440 domain or that intends to use eminent domain to acquire property if the property cannot be
441 acquired in a voluntary transaction shall:

442 (a) before the governing body, as defined in Subsection 78B-6-504(2)(a), of the
443 political subdivision takes a final vote to approve the filing of an eminent domain action, make
444 a reasonable effort to negotiate with the property owner for the purchase of the property; and

445 (b) except as provided in Subsection ~~[(3)]~~ (4), as early in the negotiation process
446 described in Subsection (1)(a) as practicable, but no later than 14 days before the day on which
447 a final vote is taken to approve the filing of an eminent domain action:

448 ~~[(i) advise the property owner of the owner's rights to mediation and arbitration under~~
449 ~~Section 78B-6-522, including the name and current telephone number of the property rights~~
450 ~~ombudsman, established in Title 13, Chapter 43, Property Rights Ombudsman Act;]~~

451 ~~[(ii)]~~ (i) provide the property owner a complete printed copy of the materials provided
452 on the Office of the Property Rights Ombudsman website in accordance with Section
453 13-43-203 regarding the acquisition of property for a public purpose and a property owner's
454 right to just compensation; and

455 ~~[(iii)]~~ (ii) provide the property owner a written statement ~~[explaining that oral~~
456 ~~representations or promises made during the negotiation process are not binding upon the~~
457 ~~person seeking to acquire the property by eminent domain;]~~ in substantially the following form:

458 "Although this letter is provided as part of an attempt to negotiate with you for the sale
459 of your property or an interest in your property without using the power of eminent domain,
460 [name of political subdivision] may use that power if it is not able to acquire the property by
461 negotiation. Because of that potential, the person negotiating on behalf of the entity is required
462 to provide the following disclosures to you.

463 1. You are entitled to receive just compensation for your property.

464 2. You are entitled to an opportunity to negotiate with [name of political subdivision]
465 over the amount of just compensation before any legal action will be filed.

466 a. You are entitled to an explanation of how the compensation offered for your

467 property was calculated.

468 b. If an appraiser is asked to value your property, you are entitled to accompany the
469 appraiser during an inspection of the property.

470 3. You are entitled to discuss this case with the attorneys at the Office of the Property
471 Rights Ombudsman. The office may be reached at [provide the current contact information for
472 the Office of the Property Rights Ombudsman].

473 4. The Office of the Property Rights Ombudsman is a neutral state office staffed by
474 attorneys experienced in eminent domain. Their purpose is to assist citizens in understanding
475 and protecting their property rights. You are entitled to ask questions and request an
476 explanation of your legal options.

477 5. If you have a dispute with [name of political subdivision] over the amount of just
478 compensation due to you, you are entitled to request free mediation or arbitration of the dispute
479 from the Office of the Property Rights Ombudsman. As part of mediation or arbitration, you
480 are entitled to request a free independent valuation of the property.

481 6. Oral representations or promises made during the negotiation process are not
482 binding upon the entity seeking to acquire the property by eminent domain."

483 (2) Except as provided in Subsection (4), the entity involved in the acquisition of
484 property may not bring a legal action to acquire the property under this chapter until 30 days
485 after the day on which the disclosure and materials required in Subsection (1)(b)(ii) are
486 provided to the property owner.

487 ~~[(2)]~~ (3) A person, other than a political subdivision of the state, that seeks to acquire
488 property by eminent domain or that intends to use eminent domain to acquire property if the
489 property cannot be acquired in a voluntary transaction shall:

490 (a) before filing an eminent domain action, make a reasonable effort to negotiate with
491 the property owner for the purchase of the property; and

492 (b) except as provided in Subsection ~~[(3)]~~ (4), as early in the negotiation process
493 described in Subsection ~~[(2)]~~ (3)(a) as practicable, but no later than ~~[14]~~ 30 days before the day
494 on which the person files an eminent domain action:

495 ~~[(i) advise the property owner of the owner's rights to mediation and arbitration under~~
496 ~~Section 78B-6-522, including the name and current telephone number of the property rights~~
497 ~~ombudsman, established in Title 13, Chapter 43, Property Rights Ombudsman Act;]~~

498 [(iii)] (i) provide the property owner a complete printed copy of the materials provided
499 on the Office of the Property Rights Ombudsman website in accordance with Section
500 13-43-203 regarding the acquisition of property for a public purpose and a property owner's
501 right to just compensation; and

502 [(iii)] (ii) provide the property owner a written statement [~~explaining that oral~~
503 ~~representations or promises made during the negotiation process are not binding upon the~~
504 ~~person seeking to acquire the property by eminent domain.~~] in substantially the following form:

505 "Although this letter is provided as part of an attempt to negotiate with you for the sale
506 of your property or an interest in your property without using the power of eminent domain,
507 [name of entity] may use that power if it is not able to acquire the property by negotiation.
508 Because of that potential, the person negotiating on behalf of the entity is required to provide
509 the following disclosures to you.

510 1. You are entitled to receive just compensation for your property.

511 2. You are entitled to an opportunity to negotiate with [name of entity] over the amount
512 of just compensation before any legal action will be filed.

513 a. You are entitled to an explanation of how the compensation offered for your
514 property was calculated.

515 b. If an appraiser is asked to value your property, you are entitled to accompany the
516 appraiser during an inspection of the property.

517 3. You are entitled to discuss this case with the attorneys at the Office of the Property
518 Rights Ombudsman. The office may be reached at [provide the current contact information for
519 the Office of the Property Rights Ombudsman].

520 4. The Office of the Property Rights Ombudsman is a neutral state office staffed by
521 attorneys experienced in eminent domain. Their purpose is to assist citizens in understanding
522 and protecting their property rights. You are entitled to ask questions and request an
523 explanation of your legal options.

524 5. If you have a dispute with [name of entity] over the amount of just compensation
525 due to you, you are entitled to request free mediation or arbitration of the dispute from the
526 Office of the Property Rights Ombudsman. As part of mediation or arbitration, you are entitled
527 to request a free independent valuation of the property.

528 6. Oral representations or promises made during the negotiation process are not

529 binding upon the entity seeking to acquire the property by eminent domain."

530 ~~(3)~~ (4) The court may, upon a showing of exigent circumstances and for good cause,
531 shorten the 14-day period described in Subsection (1)(b) ~~[or (2)(b)]~~ or the 30-day period
532 described in Subsection (1)(c) or (3)(b).

533 Section 8. Section **78B-6-522** is amended to read:

534 **78B-6-522. Dispute resolution.**

535 (1) In any dispute between a condemner and a private property owner arising out of this
536 chapter, or a dispute over the taking of private property for a public use without the prior use of
537 eminent domain, the private property owner may submit the dispute for mediation or
538 arbitration to the Office of the Property Rights Ombudsman under Section 13-43-204.

539 (2) An action submitted to the Office of the Property Rights Ombudsman under
540 authority of this section does not bar or stay any action for occupancy of premises authorized
541 by Section 78B-6-510.

542 (3) (a) (i) A mediator or arbitrator, acting at the request of the property owner under
543 Section 13-43-204, has standing in an action brought in district court under this chapter to file
544 with the court a motion to stay the action during the pendency of the mediation or arbitration.

545 (ii) A mediator or arbitrator may not file a motion to stay under Subsection (3)(a)(i)
546 unless the mediator or arbitrator certifies at the time of filing the motion that a stay is
547 reasonably necessary to reach a resolution of the case through mediation or arbitration.

548 (b) If a stay is granted pursuant to a motion under Subsection (3)(a) and the order
549 granting the stay does not specify when the stay terminates, the mediator or arbitrator shall file
550 with the district court a motion to terminate the stay within 30 days after:

551 (i) the resolution of the dispute through mediation;

552 (ii) the issuance of a final arbitration award; or

553 (iii) a determination by the mediator or arbitrator that mediation or arbitration is not
554 appropriate.

555 (4) (a) The private property owner or displaced person may request that the mediator or
556 arbitrator authorize an additional appraisal.

557 (b) If the mediator or arbitrator determines that an additional appraisal is reasonably
558 necessary to reach a resolution of the case, the mediator or arbitrator may:

559 (i) have an additional appraisal of the property prepared by an independent appraiser;

560 and

561 (ii) require the condemnor to pay the costs of the first additional appraisal.

Legislative Review Note
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Office of Legislative Research and General Counsel