

Representative Aaron Tilton proposes the following substitute bill:

EMINENT DOMAIN

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Aaron Tilton

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to eminent domain.

Highlighted Provisions:

This bill:

- ▶ establishes a task force to study issues related to eminent domain and provides for task force membership, duties, compensation, and reporting requirements;
- ▶ clarifies an exclusion from a public use relating to trails, paths, or other ways for walking, hiking, bicycling, equestrian use, or other recreational uses for which eminent domain may not be used;
- ▶ excludes emergency access ways and open land as public uses for which eminent domain may be used;
- ▶ excludes certain parks from the scope of what is a public use for purposes of eminent domain; and
- ▶ expresses legislative intent concerning S.B. 117 passed during the 2006 General Session.

Monies Appropriated in this Bill:

This bill appropriates:

- ▶ \$8,000 to the Senate; and



26 ▶ \$21,000 to the House of Representatives.

27 **Other Special Clauses:**

28 This bill provides a November 30, 2007 repeal date for certain sections of this bill.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **78-34-1**, as last amended by Chapter 358, Laws of Utah 2006

32 **Uncodified Material Affected:**

33 ENACTS UNCODIFIED MATERIAL

34

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

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

36 **78-34-1. Uses for which right may be exercised.**

37 (1) Subject to the provisions of this chapter, the right of eminent domain may be
38 exercised in behalf of the following public uses:

39 ~~[(1)]~~ (a) all public uses authorized by the Government of the United States[-];

40 ~~[(2)]~~ (b) public buildings and grounds for the use of the state, and all other public uses
41 authorized by the Legislature[-];

42 ~~[(3)]~~ (c) (i) public buildings and grounds for the use of any county, city [~~or~~
43 ~~incorporated~~], town, or board of education;

44 (ii) reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water for the
45 use of the inhabitants of any county [~~or~~], city, or [~~incorporated~~] town, or for the draining of any
46 county, city, or [~~incorporated~~] town;

47 (iii) the raising of the banks of streams, removing obstructions [~~therefrom~~] from
48 streams, and widening, deepening, or straightening their channels;

49 (iv) bicycle paths and sidewalks adjacent to paved roads;

50 (v) roads, streets, and alleys for public vehicular use, excluding:

51 (A) trails, paths, or other ways for walking, hiking, bicycling, equestrian use, or other
52 recreational uses, or whose primary purpose is as a foot path, equestrian trail, bicycle path, or
53 walkway; and

54 (B) paths, lanes, or other ways for emergency access; and

55 (vi) all other public uses for the benefit of any county, city, or [~~incorporated~~] town, or

57 [the] their inhabitants [~~thereof~~];

58 [~~(4)~~] (d) wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads,
59 plank and turnpike roads, roads for transportation by traction engines or road locomotives,
60 roads for logging or lumbering purposes, and railroads and street railways for public
61 transportation[-];

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

67 [~~(6)~~] (f) roads, railroads, tramways, tunnels, ditches, flumes, pipes and dumping places
68 to facilitate the milling, smelting or other reduction of ores, or the working of mines, quarries,
69 coal mines or mineral deposits including minerals in solution; outlets, natural or otherwise,
70 for the deposit or conduct of tailings, refuse or water from mills, smelters or other works for
71 the reduction of ores, or from mines, quarries, coal mines or mineral deposits including
72 minerals in solution; mill dams; gas, oil or coal pipelines, tanks or reservoirs, including any
73 subsurface stratum or formation in any land for the underground storage of natural gas, and in
74 connection therewith such other interests in property as may be required adequately to
75 examine, prepare, maintain, and operate such underground natural gas storage facilities; and
76 solar evaporation ponds and other facilities for the recovery of minerals in solution; also any
77 occupancy in common by the owners or possessors of different mines, quarries, coal mines,
78 mineral deposits, mills, smelters, or other places for the reduction of ores, or any place for the
79 flow, deposit or conduct of tailings or refuse matter[-];

80 [~~(7)~~] (g) byroads leading from highways to residences and farms[-];

81 [~~(8)~~] (h) telegraph, telephone, electric light and electric power lines, and sites for
82 electric light and power plants[-];

83 [~~(9)~~] (i) sewerage of any city or town, or of any settlement of not less than ten families,
84 or of any public building belonging to the state, or of any college or university[-];

85 [~~(10)~~] (j) canals, reservoirs, dams, ditches, flumes, aqueducts and pipes for supplying
86 and storing water for the operation of machinery for the purpose of generating and transmitting
87 electricity for power, light or heat[-];

88 ~~[(11)]~~ (k) cemeteries and public parks~~[-]; except for a park whose primary use is:~~

89 ~~(i) as a trail, path, or other way for walking, hiking, bicycling, or equestrian use; or~~

90 ~~(ii) to connect other trails, paths, or other ways for walking, hiking, bicycling, or~~
91 ~~equestrian use;~~

92 ~~[(12)]~~ (l) pipe lines for the purpose of conducting any and all liquids connected with
93 the manufacture of beet sugar~~[-]; and~~

94 ~~[(13)]~~ (m) sites for mills, smelters or other works for the reduction of ores and
95 necessary to the successful operation thereof, including the right to take lands for the discharge
96 and natural distribution of smoke, fumes and dust therefrom, produced by the operation of such
97 works; provided, that the powers granted by this subdivision shall not be exercised in any
98 county where the population exceeds ~~[twenty thousand]~~ 20,000, or within one mile of the limits
99 of any city or incorporated town; nor unless the proposed condemner has the right to operate by
100 purchase, option to purchase or easement, at least ~~[seventy-five per cent]~~ 75% in value of land
101 acreage owned by persons or corporations situated within a radius of four miles from the mill,
102 smelter or other works for the reduction of ores; nor beyond the limits of said four-mile radius;
103 nor as to lands covered by contracts, easements or agreements existing between the condemner
104 and the owner of land within said limit and providing for the operation of such mill, smelter or
105 other works for the reduction of ores; nor until an action shall have been commenced to restrain
106 the operation of such mill, smelter or other works for the reduction of ores.

107 (2) Acquisition of property for preservation as open land, as defined in Section
108 11-38-102, is not a public use for which eminent domain may be used.

109 Section 2. **Eminent Domain Task Force -- Creation -- Membership -- Interim**
110 **rules followed -- Compensation -- Staff.**

111 (1) There is created the Eminent Domain Task Force consisting of the following 11
112 members:

113 (a) three members of the Senate appointed by the president of the Senate, no more than
114 two of whom may be from the same political party; and

115 (b) eight members of the House of Representatives appointed by the speaker of the
116 House of Representatives, no more than five of whom may be from the same political party.

117 (2) (a) The president of the Senate shall designate a member of the Senate appointed
118 under Subsection (1)(a) as a cochair of the task force.

119 (b) The speaker of the House of Representatives shall designate a member of the House
120 of Representatives appointed under Subsection (1)(b) as a cochair of the task force.

121 (3) In conducting its business, the task force shall comply with the rules of legislative
122 interim committees.

123 (4) Salaries and expenses of the members of the task force shall be paid in accordance
124 with Section 36-2-2 and Legislative Joint Rule 15.03.

125 (5) The Office of Legislative Research and General Counsel shall provide staff support
126 to the task force.

127 **Section 3. Duties -- Interim report.**

128 (1) The task force shall review and make recommendations on the following issues:

129 (a) the policy of the state regarding the public uses for which property may be taken by
130 eminent domain;

131 (b) whether current statutory provisions relating to eminent should be revised and
132 updated; and

133 (c) other issues relating to eminent domain that the task force considers appropriate.

134 (2) A final report, including any proposed legislation shall be presented to the Political
135 Subdivisions Interim Committee Interim Committee before November 30, 2007.

136 **Section 4. Appropriation.**

137 There is appropriated from the General Fund for fiscal year 2006-07 only:

138 (1) \$8,000 to the Senate to pay for the compensation and expenses of senators on the
139 task force; and

140 (2) \$21,000 to the House of Representatives to pay for the compensation and expenses
141 of representatives on the task force.

142 **Section 5. Legislative intent.**

143 (1) During the 2006 General Session, the Legislature passed S.B. 117, Eminent
144 Domain Amendments, which, among other things, amended Section 78-34-1 of the Utah Code
145 relating to the public uses for which eminent domain may be exercised. One of the changes to
146 Subsection 78-34-1(3) made by S.B. 117 was the addition of language to indicate that trails,
147 paths, or other ways for walking, hiking, bicycling, equestrian use, or other recreation uses are
148 excluded from the public uses for which eminent domain may be used.

149 (2) The change to Subsection 78-34-1(3) made by S.B. 117 was an effort to state

150 explicitly an existing principle of eminent domain that had not previously been as explicitly
151 stated. A clarification of the intent behind the change to Subsection 78-34-1(3) will benefit all
152 those applying and interpreting this provision of the Utah Code.

153 (3) The Legislature viewed Section 78-34-1, before the passage of S.B. 117 from the
154 2006 General Session, as excluding trails, paths, or other ways for walking, hiking, bicycling,
155 equestrian use, or other recreational uses, from the public uses for which eminent domain may
156 be used.

157 (4) In passing S.B. 117, it was the intent of the Legislature that the addition of new
158 language to Subsection 78-34-1(3) after the word "alleys" was to state explicitly those
159 enumerated exclusions that had not previously been as explicitly stated.

160 Section 6. **Repeal date.**

161 Sections 2 through 4 of this bill are repealed November 30, 2007.