

EMINENT DOMAIN AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael E. Noel

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends eminent domain provisions of the Judicial Code to allow the taking of property for roads necessary to provide access for exploration, development, or production of oil or gas.

Highlighted Provisions:

This bill:

- ▶ permits a person to bring an eminent domain action for roads necessary to provide access for exploration, development, or production of oil or gas, if the person first complies with the negotiation and notice requirements described in this bill; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-6-501, as last amended by Laws of Utah 2011, Chapter 82

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

Section 1. Section **78B-6-501** is amended to read:



28 **78B-6-501. Eminent domain -- Uses for which right may be exercised.**

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

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

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

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

36 (b) reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water for the
37 use of the inhabitants of any county, city, or town, or for the draining of any county, city, or
38 town;

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

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

42 (e) roads, streets, and alleys for public vehicular use, excluding trails, paths, or other
43 ways for walking, hiking, bicycling, equestrian use, or other recreational uses, or whose
44 primary purpose is as a foot path, equestrian trail, bicycle path, or walkway; and

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

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

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

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

57 (b) outlets, natural or otherwise, for the deposit or conduct of tailings, refuse or water
58 from mills, smelters or other works for the reduction of ores, or from mines, quarries, coal

59 mines or mineral deposits including minerals in solution;

60 (c) mill dams;

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

65 (e) solar evaporation ponds and other facilities for the recovery of minerals in solution;
66 [~~and~~]

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

70 (g) roads necessary to provide access for exploration, development, or production of oil
71 or gas, if, before initiating an action, the party seeking eminent domain:

72 (i) makes a reasonable effort to negotiate with the property owner for the use of the
73 property;

74 (ii) advises the property owner of the property owner's rights to mediation and
75 arbitration under Section 78B-6-522;

76 (iii) makes, through certified mail, an initial written settlement offer to the owner of
77 record, as shown on the records in the county recorder's office, that includes:

78 (A) a description of the general location and extent of the access sought, with sufficient
79 detail for reasonable identification;

80 (B) an offer to, at the property owner's request, have a representative of the condemner
81 tour the property sought with the owner or the owner's representative, at a mutually agreeable
82 time, to discuss issues related to the property sought and the initial offer;

83 (C) an estimate of the fair market value of the property sought and the general basis for
84 the estimate; and

85 (D) a proposal detailing the reclamation planned by the condemner for the property
86 disturbed by the condemner's project; and

87 (iv) provides the owner of record an opportunity to, within at least 30 days after the day
88 on which the party seeking eminent domain sends the initial written settlement offer:

89 (A) accept the offer, in writing; or

- 90 (B) make a counter-offer, in writing:
91 (7) byroads leading from a highway to:
92 (a) a residence;
93 (b) a development; or
94 (c) a farm;
95 (8) telegraph, telephone, electric light and electric power lines, and sites for electric
96 light and power plants;
97 (9) sewage service for:
98 (a) a city, a town, or any settlement of not less than 10 families;
99 (b) a development;
100 (c) a public building belonging to the state; or
101 (d) a college or university;
102 (10) canals, reservoirs, dams, ditches, flumes, aqueducts, and pipes for supplying and
103 storing water for the operation of machinery for the purpose of generating and transmitting
104 electricity for power, light or heat;
105 (11) cemeteries and public parks, except for a park whose primary use is:
106 (a) as a trail, path, or other way for walking, hiking, bicycling, or equestrian use; or
107 (b) to connect other trails, paths, or other ways for walking, hiking, bicycling, or
108 equestrian use;
109 (12) pipe lines for the purpose of conducting any and all liquids connected with the
110 manufacture of beet sugar; and
111 (13) sites for mills, smelters or other works for the reduction of ores and necessary to
112 their successful operation, including the right to take lands for the discharge and natural
113 distribution of smoke, fumes, and dust, produced by the operation of works, provided that the
114 powers granted by this section may not be exercised in any county where the population
115 exceeds 20,000, or within one mile of the limits of any city or incorporated town nor unless the
116 proposed condemner has the right to operate by purchase, option to purchase or easement, at
117 least 75% in value of land acreage owned by persons or corporations situated within a radius of
118 four miles from the mill, smelter or other works for the reduction of ores; nor beyond the limits
119 of the four-mile radius; nor as to lands covered by contracts, easements, or agreements existing
120 between the condemner and the owner of land within the limit and providing for the operation

121 of such mill, smelter, or other works for the reduction of ores; nor until an action shall have
122 been commenced to restrain the operation of such mill, smelter, or other works for the
123 reduction of ores.

Legislative Review Note
as of 1-10-12 11:59 AM

Office of Legislative Research and General Counsel