

EMINENT DOMAIN AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lee B. Perry

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts language related to an entity's power of eminent domain.

Highlighted Provisions:

This bill:

- ▶ amends provisions related to the uses for which eminent domain may be used;
- ▶ amends provisions related to negotiation and disclosure requirements before filing an eminent domain action;
- ▶ prohibits a condemning entity from occupying private real property for a public purpose unless certain requirements are met;
- ▶ requires a condemning entity to reimburse an owner for certain expenses;
- ▶ enacts provisions governing the acquisition of or compensation for certain structures on acquired real property;
- ▶ prohibits a person acting on behalf of a condemning entity from acquiring real property unless the person holds a current real estate license; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 **78B-6-501**, as last amended by Laws of Utah 2012, Chapter 264

30 **78B-6-505**, as last amended by Laws of Utah 2012, Chapter 264

31 ENACTS:

32 **78B-6-510.5**, Utah Code Annotated 1953

33 **78B-6-510.6**, Utah Code Annotated 1953

34 **78B-6-510.7**, Utah Code Annotated 1953

35 **78B-6-510.8**, Utah Code Annotated 1953

36 REPEALS:

37 **57-12-5**, as last amended by Laws of Utah 1998, Chapter 321

38 **57-12-6**, as enacted by Laws of Utah 1972, Chapter 24



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

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

42 **78B-6-501. Eminent domain -- Uses for which right may be exercised.**

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

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

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

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

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

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

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

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

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

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

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

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

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

74 (c) mill dams;

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

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

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

84 (7) byroads leading from a highway to:

85 (a) a residence; or

86 [~~(b) a development; or~~]

87 [~~(c)~~] (b) a farm;

88 (8) telegraph, telephone, electric light and electric power lines, and sites for electric
89 light and power plants;

90 (9) sewage service for:
91 (a) a city, a town, or any settlement of not less than 10 families;
92 [~~(b) a development;~~
93 ~~(c)~~ (b) a public building belonging to the state; or
94 ~~(d)~~ (c) a college or university;
95 (10) canals, reservoirs, dams, ditches, flumes, aqueducts, and pipes for supplying and
96 storing water for the operation of machinery for the purpose of generating and transmitting
97 electricity for power, light or heat;

98 (11) cemeteries and public parks, except for a park whose primary use is:
99 (a) as a trail, path, or other way for walking, hiking, bicycling, or equestrian use; or
100 (b) to connect other trails, paths, or other ways for walking, hiking, bicycling, or
101 equestrian use;

102 (12) pipe lines for the purpose of conducting any and all liquids connected with the
103 manufacture of beet sugar; and

104 (13) sites for mills, smelters or other works for the reduction of ores and necessary to
105 their successful operation, including the right to take lands for the discharge and natural
106 distribution of smoke, fumes, and dust, produced by the operation of works, provided that the
107 powers granted by this section may not be exercised in any county where the population
108 exceeds 20,000, or within one mile of the limits of any city or incorporated town nor unless the
109 proposed condemner has the right to operate by purchase, option to purchase or easement, at
110 least 75% in value of land acreage owned by persons or corporations situated within a radius of
111 four miles from the mill, smelter or other works for the reduction of ores; nor beyond the limits
112 of the four-mile radius; nor as to lands covered by contracts, easements, or agreements existing
113 between the condemner and the owner of land within the limit and providing for the operation
114 of such mill, smelter, or other works for the reduction of ores; nor until an action shall have
115 been commenced to restrain the operation of such mill, smelter, or other works for the
116 reduction of ores.

117 Section 2. Section **78B-6-505** is amended to read:
118 **78B-6-505. Negotiation and disclosure required before filing an eminent domain**
119 **action.**

120 (1) A political subdivision of the state that seeks to acquire property by eminent

121 domain or that intends to use eminent domain to acquire property if the property cannot be
122 acquired in a voluntary transaction shall:

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

126 (b) except as provided in Subsection [~~(3)~~] (5), as early in the negotiation process
127 described in Subsection (1)(a) as practicable, but no later than 14 days before the day on which
128 a final vote is taken to approve the filing of an eminent domain action:

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

132 (ii) provide the property owner a written statement explaining that oral representations
133 or promises made during the negotiation process are not binding upon the person seeking to
134 acquire the property by eminent domain.

135 (2) An entity shall prepare as early in the negotiation process as practicable and provide
136 to the property an appraisal or written calculation of the just compensation to be offered by the
137 entity to acquire the real property by eminent domain.

138 (a) The written calculation shall separately state the just compensation amount and any
139 amount for damages to the remaining real property in accordance with Section 78B-6-511.

140 (b) A person making the appraisal or calculation shall:

141 (i) inspect the property in the process of providing the appraisal or calculation; and

142 (ii) notify the property owner or the owner's representative in advance that the property
143 owner or the owner's representative may accompany the person making the appraisal or
144 calculation during the inspection of the property.

145 (c) An entity may not offer an amount that is less than the fair market value of the
146 property to be acquired.

147 (3) An entity may not require an owner to surrender possession of real property until:

148 (a) the owner has consented to the surrender of possession;

149 (b) the entity has paid the agreed purchase price; or

150 (c) the entity deposits with a court of jurisdiction of condemnation of the property, in
151 accordance with applicable law, an amount for the benefit of the owner that is no less than:

- 152 (i) the lowest approved appraisal of the fair market value of the property; or
153 (ii) the amount of the award of compensation in the condemnation proceeding of the
154 property.

155 ~~[(2)]~~ (4) A person, other than a political subdivision of the state, that seeks to acquire
156 property by eminent domain or that intends to use eminent domain to acquire property if the
157 property cannot be acquired in a voluntary transaction shall:

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

160 (b) except as provided in Subsection ~~[(3)]~~ (5), as early in the negotiation process
161 described in Subsection ~~[(2)]~~ (4)(a) as practicable, but no later than 14 days before the day on
162 which the person files an eminent domain action:

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

166 (ii) provide the property owner a written statement explaining that oral representations
167 or promises made during the negotiation process are not binding upon the person seeking to
168 acquire the property by eminent domain.

169 ~~[(3)]~~ (5) The court may, for good cause, shorten the 14-day period described in
170 Subsection (1)(b) or ~~[(2)]~~ (4)(b).

171 (6) If the acquisition of only part of the property would leave its owner with an
172 uneconomic remnant, the entity shall make an offer to acquire the entire property.

173 Section 3. Section **78B-6-510.5** is enacted to read:

174 **78B-6-510.5. Occupancy of premises without permission.**

175 (1) An entity may not occupy private real property for a public purpose as authorized in
176 this part unless the entity has:

177 (a) a written or prescriptive easement, license, or other legal right to occupy the
178 property;

179 (b) written consent of the property owner; or

180 (c) an order of the court.

181 (2) If an entity is in violation of Subsection (1), the owner of the occupied property
182 may seek one or a combination of the following:

183 (a) relief for a constitutional taking through arbitration or mediation, including the
184 provision of an appraisal by a mediator at the expense of the occupying entity in accordance
185 with Section 13-43-204;

186 (b) an immediate injunction to terminate the illegal occupation of the private property;
187 or

188 (c) just compensation for the taking or damaging of private property without the
189 payment of just compensation.

190 Section 4. Section **78B-6-510.6** is enacted to read:

191 **78B-6-510.6. Reimbursement of owner for expenses.**

192 An entity acting under authority of this part in acquiring real property for its use shall as
193 soon as practicable after the date of payment of the purchase price or the date of deposit into
194 court of funds to satisfy the award of compensation in a condemnation proceeding to acquire
195 real property, whichever is the earlier, reimburse the owner for expenses the owner necessarily
196 incurred for:

197 (1) recording fees, transfer taxes, and similar expenses incidental to conveying the real
198 property to the acquiring entity;

199 (2) penalty costs for prepayment for any preexisting recorded mortgage entered into in
200 good faith encumbering the real property;

201 (3) the pro rata portion of real property taxes paid, which are allocable to a period
202 subsequent to the date of vesting title in the agency, or the effective date of possession of such
203 real property by the agency, whichever is the earlier; and

204 (4) relocation costs in accordance with Title 57, Chapter 12, Utah Relocation
205 Assistance Act.

206 Section 5. Section **78B-6-510.7** is enacted to read:

207 **78B-6-510.7. Buildings, structures, or other improvements.**

208 (1) If an entity acquires an interest in real property in accordance with this part, the
209 entity shall also acquire an equal interest in each building, structure, or other improvement
210 located upon the real property and that is required to be removed from the real property or that
211 is determined to be adversely affected by the entity's use of the real property.

212 (2) (a) For the purpose of determining the just compensation to be paid for a building,
213 structure, or other improvement acquired in accordance with Subsection (1), the building,

214 structure, or other improvement is considered to be a part of the acquired real property,
215 notwithstanding the right or obligation of a tenant, as against the owner of any other interest in
216 the real property, to remove the building, structure, or improvement at the expiration of the
217 tenant's term.

218 (b) An entity described in Subsection (1) shall pay a tenant described in Subsection
219 (2)(a) the greater of:

220 (i) the fair market value that the building, structure, or improvement contributes to the
221 fair market value of the entity's acquired property; or

222 (ii) the fair market value of the building, structure, or improvement for removal from
223 the real property.

224 (3) (a) Payment for the building, structure, or improvement described in Subsection
225 (2)(b) does not result in duplication of any payments otherwise authorized by law.

226 (b) An entity may withhold payment unless the owner of the property involved
227 disclaims all interest in the improvements of the tenant.

228 (c) In consideration for any payment, the tenant shall assign, transfer, and release all of
229 the tenant's right, title, and interest in and to the improvements.

230 (d) The entity's acquisition of a building, structure, or other improvement may not be
231 construed to deprive the tenant of any rights to reject payment and to obtain payment for a
232 property interest in accordance with other laws of this state.

233 Section 6. Section **78B-6-510.8** is enacted to read:

234 **78B-6-510.8. License for acquisition required.**

235 Except as provided in Section 61-2f-202, a person may not acquire real property in
236 accordance with this part on behalf of an authorized entity unless the person holds a current
237 real estate license as required by Title 61, Section 2f, Real Estate Licensing and Practices Act.

238 Section 7. **Repealer.**

239 This bill repeals:

240 Section **57-12-5, Reimbursement of owner for expenses.**

241 Section **57-12-6, Buildings, structures or other improvements.**

Legislative Review Note
as of 2-4-13 1:29 PM

Office of Legislative Research and General Counsel