

SB0139S02 compared with SB0139S01

~~{Omitted text}~~ shows text that was in SB0139S01 but was omitted in SB0139S02

inserted text shows text that was not in SB0139S01 but was inserted into SB0139S02

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Mineral Rights Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ronald M. Winterton

House Sponsor: Kay J. Christofferson

LONG TITLE

General Description:

This bill modifies provisions relating to eminent domain used to take a mineral estate in land.

Highlighted Provisions:

This bill:

- ▶ ~~{prohibits the taking of a fee simple interest in land if an easement interest suffices;}~~
- ▶ ~~{requires that the taking of a fee simple interest explicitly exclude mineral estate interests unless necessary;}~~
- ▶ describes information about eminent domain and mineral rights that must be provided on the Office of the Property Rights Ombudsman's website;
- ▶ requires ~~{for}~~ separate payment of just compensation for a mineral estate taken ~~{by}~~ through eminent domain; ~~{and}~~
- ▶ clarifies that fee simple title to land may not be taken by eminent domain unless the taking is for a certain purpose; and
- ▶ makes technical and conforming changes.

SB0139S01

SB0139S01 compared with SB0139S02

16 **Money Appropriated in this Bill:**

17 None

18 None

21 **AMENDS:**

22 **13-43-203 , as last amended by Laws of Utah 2018, Chapter 215 , as last amended by Laws of
Utah 2018, Chapter 215**

23 **78B-6-501** , as last amended by Laws of Utah 2024, Chapters 25, 350 , as last amended by Laws of
Utah 2024, Chapters 25, 350

24 **78B-6-502** , as last amended by Laws of Utah 2024, Chapters 25, 350 , as last amended by Laws of
Utah 2024, Chapters 25, 350

25

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

27 **Section 1. Section 13-43-203 is amended to read:**

28 **13-43-203. Office of the Property Rights Ombudsman -- Duties.**

29 (1) The Office of the Property Rights Ombudsman shall:

30 (a) develop and maintain expertise in and understanding of takings, eminent domain, and land use law;

32 (b) clearly identify the specific information that is prepared for distribution to property owners whose
land is being acquired under the provisions of Section 78B-6-505;

34 (c) assist state agencies and local governments in developing the guidelines required by Title 63L,
Chapter 4, Constitutional Takings Issues Act;

36 (d) at the request of a state agency or local government, assist the state agency or local government, in
analyzing actions with potential takings implications or other land use issues;

39 (e) advise real property owners who:

40 (i) have a legitimate potential or actual takings claim against a state or local government entity or have
questions about takings, eminent domain, and land use law; or

43 (ii) own a parcel of property that is landlocked, as to the owner's rights and options with respect to
obtaining access to a public street;

45 (f) identify state or local government actions that have potential takings implications and, if appropriate,
advise those state or local government entities about those implications;

48 (g) provide information to private citizens, civic groups, government entities, and other interested
parties about takings, eminent domain, and land use law and their rights, including a right to just

SB0139S01 compared with SB0139S02

compensation, and responsibilities under the takings, eminent domain, or land use laws through seminars and publications, and by other appropriate means;

53 (h)

. (i) [~~provide the information described in Section 78B-6-505 on the Office of the Property Rights Ombudsman's website in a form that is easily accessible; and~~] provide, in a form that is easily accessible, the following information on the Office of the Property Rights Ombudsman's website:

57 (A) the information described in Section 78B-6-505;

58 (B) a definition and explanation of the term, "fee simple title";

59 (C) an explanation of the implications for a property owner when fee simple title is taken through eminent domain;

61 (D) a notification that eminent domain may include taking a recorded interest held in real property, including a mineral right;

63 (E) a notification that a property owner may be compensated for a recorded interest in real property, including a mineral right; and

65 (F) a notification that a property owner can request a separate valuation for a recorded interest in real property; and

67 (ii) ensure that the information described in Subsection (1)(h)(i) is current; and

68 (i)

. (i) provide education and training regarding:

69 (A) the drafting and application of land use laws and regulations; and

70 (B) land use dispute resolution; and

71 (ii) use any money transmitted in accordance with Subsection 15A-1-209(5) to pay for any expenses required to provide the education and training described in Subsection (1)(i)(i), including grants to a land use training organization that:

74 (A) the Land Use and Eminent Domain Advisory Board, created in Section 13-43-202, selects and proposes; and

76 (B) the property rights ombudsman and the executive director of the Department of Commerce jointly approve.

78 (2)

SB0139S01 compared with SB0139S02

- (a) Neither the Office of the Property Rights Ombudsman nor its individual attorneys may represent private parties, state agencies, local governments, or any other individual or entity in a legal action that arises from or relates to a matter addressed in this chapter.
- 82 (b) An action by an attorney employed by the Office of the Property Rights Ombudsman, by a neutral third party acting as mediator or arbitrator under Section 13-43-204, or by a neutral third party rendering an advisory opinion under Section 13-43-205 or 13-43-206, taken within the scope of the duties set forth in this chapter, does not create an attorney-client relationship between the Office of the Property Rights Ombudsman, or the office's attorneys or appointees, and an individual or entity.
- 89 (3) No member of the Office of the Property Rights Ombudsman nor a neutral third party rendering an advisory opinion under Section 13-43-205 or 13-43-206, may be compelled to testify in a civil action filed concerning the subject matter of any review, mediation, or arbitration by, or arranged through, the office.
- 93 (4)
- . (a) Except as provided in Subsection (4)(b), evidence of a review by the Office of the Property Rights Ombudsman and the opinions, writings, findings, and determinations of the Office of the Property Rights Ombudsman are not admissible as evidence in a judicial action.
- 97 (b) Subsection (4)(a) does not apply to:
- 98 (i) actions brought under authority of Title 78A, Chapter 8, Small Claims Courts;
- 99 (ii) a judicial confirmation or review of the arbitration itself as authorized in Title 78B, Chapter 11, Utah Uniform Arbitration Act;
- 101 (iii) actions for de novo review of an arbitration award or issue brought under the authority of Subsection 13-43-204(3)(a)(i); or
- 103 (iv) advisory opinions provided for in Sections 13-43-205 and 13-43-206.
- 104 Section 2. Section **78B-6-501** is amended to read:
- 105 **78B-6-501. Eminent domain -- Uses for which right may be exercised -- Limitations on eminent domain.**
- 28 (1) As used in this section:
- 29 (a) "Century farm" means real property that is:
- 30 (i) assessed under Title 59, Chapter 2, Part 5, Farmland Assessment Act; and
- 31 (ii) owned or held by the same family for a continuous period of 100 years or more.
- 32 (b) "Mineral or element" means the same as that term is defined in Section 65A-17-101.

SB0139S01 compared with SB0139S02

- 33 (c)
- . (i) "Mining use" means:
- 34 (A) the full range of permitted or active activities, from prospecting and exploration to reclamation
and closure, associated with the exploitation of a mineral deposit; and
- 37 (B) the use of the surface, subsurface, groundwater, and surface water of an area in connection
with the activities described in Subsection (1)(c)(i)(A) that have been, are being, or will be
conducted.
- 40 (ii) "Mining use" includes, whether conducted on-site or off-site:
- 41 (A) sampling, staking, surveying, exploration, or development activity;
- 42 (B) drilling, blasting, excavating, or tunneling;
- 43 (C) the removal, transport, treatment, deposition, and reclamation of overburden, development rock,
tailings, and other waste material;
- 45 (D) the recovery of sand and gravel;
- 46 (E) removal, transportation, extraction, beneficiation, or processing of ore;
- 47 (F) use of solar evaporation ponds and other facilities for the recovery of minerals in solution;
- 49 (G) smelting, refining, autoclaving, or other primary or secondary processing operation;
- 51 (H) the recovery of any mineral left in residue from a previous extraction or processing operation;
- 53 (I) a mining activity that is identified in a work plan or permitting document;
- 54 (J) the use, operation, maintenance, repair, replacement, construction, or alteration of a building,
structure, facility, equipment, machine, tool, or other material or property that results from or is used
in a surface or subsurface mining operation or activity;
- 58 (K) an accessory, incidental, or ancillary activity or use, both active and passive, including a utility,
private way or road, pipeline, land excavation, working, embankment, pond, gravel excavation,
mining waste, conveyor, power line, trackage, storage, reserve, passive use area, buffer zone, and
power production facility;
- 63 (L) the construction of a storage, factory, processing, or maintenance facility; and
- 64 (M) an activity described in Subsection 40-8-4(17)(a).
- 65 (2) Except as provided in Subsections (3), (4), and (5) and subject to the provisions of this part, the right
of eminent domain may be exercised on behalf of the following public uses:
- 68 (a) all public uses authorized by the federal government;
- 69

SB0139S01 compared with SB0139S02

- (b) public buildings and grounds for the use of the state, and all other public uses authorized by the Legislature;
- 71 (c)
- . (i) public buildings and grounds for the use of any county, city, town, or board of education;
- 73 (ii) reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water or sewage, including to or from a development, for the use of the inhabitants of any county, city, or town, or for the draining of any county, city, or town;
- 76 (iii) the raising of the banks of streams, removing obstructions from streams, and widening, deepening, or straightening their channels;
- 78 (iv) bicycle paths and sidewalks adjacent to paved roads;
- 79 (v) roads, byroads, streets, and alleys for public vehicular use, including for access to a development; and
- 81 (vi) all other public uses for the benefit of any county, city, or town, or its inhabitants;
- 82 (d) wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads, roads for transportation by traction engines or road locomotives, roads for logging or lumbering purposes, and railroads and street railways for public transportation;
- 86 (e) reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and pipes for the supplying of persons, mines, mills, smelters or other works for the reduction of ores, with water for domestic or other uses, or for irrigation purposes, or for the draining and reclaiming of lands, or for solar evaporation ponds and other facilities for the recovery of minerals or elements in solution;
- 91 (f)
- . (i) roads, railroads, tramways, tunnels, ditches, flumes, pipes, and dumping places to access or facilitate the milling, smelting, or other reduction of ores, or the working of mines, quarries, coal mines, or mineral deposits including oil, gas, and minerals or elements in solution;
- 95 (ii) outlets, natural or otherwise, for the deposit or conduct of tailings, refuse or water from mills, smelters or other works for the reduction of ores, or from mines, quarries, coal mines or mineral deposits including minerals or elements in solution;
- 98 (iii) mill dams;
- 99 (iv) gas, oil or coal pipelines, tanks or reservoirs, including any subsurface stratum or formation in any land for the underground storage of natural gas, and in connection with that, any other interests in

SB0139S01 compared with SB0139S02

property which may be required to adequately examine, prepare, maintain, and operate underground natural gas storage facilities;

- 104 (v) subject to Subsection (6), solar evaporation ponds and other facilities for the recovery of minerals in solution; and
- 106 (vi) any occupancy in common by the owners or possessors of different mines, quarries, coal mines, mineral deposits, mills, smelters, or other places for the reduction of ores, or any place for the flow, deposit or conduct of tailings or refuse matter;
- 110 (g) byroads leading from a highway to:
- 111 (i) a residence; or
- 112 (ii) a farm;
- 113 (h) telecommunications, electric light and electric power lines, sites for electric light and power plants, or sites for the transmission of broadcast signals from a station licensed by the Federal Communications Commission in accordance with 47 C.F.R. Part 73 and that provides emergency broadcast services;
- 117 (i) sewage service for:
- 118 (i) a city, a town, or any settlement of not fewer than 10 families;
- 119 (ii) a public building belonging to the state; or
- 120 (iii) a college or university;
- 121 (j) canals, reservoirs, dams, ditches, flumes, aqueducts, and pipes for supplying and storing water for the operation of machinery for the purpose of generating and transmitting electricity for power, light or heat;
- 124 (k) cemeteries and public parks; and
- 125 (l) sites for mills, smelters or other works for the reduction of ores and necessary to their successful operation, including the right to take lands for the discharge and natural distribution of smoke, fumes, and dust, produced by the operation of works, provided that the powers granted by this section may not be exercised in any county where the population exceeds 20,000, or within one mile of the limits of any city or incorporated town nor unless the proposed condemner has the right to operate by purchase, option to purchase or easement, at least 75% in value of land acreage owned by persons or corporations situated within a radius of four miles from the mill, smelter or other works for the reduction of ores; nor beyond the limits of the four-mile radius; nor as to lands covered by contracts, easements, or agreements existing between the condemner and the owner of land within

SB0139S01 compared with SB0139S02

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

- 139 (3) The right of eminent domain may not be exercised on behalf of the following uses:
- 140 (a) except as provided in Subsection (2)(c)(iv), trails, paths, or other ways for walking, hiking,
bicycling, equestrian use, or other recreational uses, or whose primary purpose is as a foot path,
equestrian trail, bicycle path, or walkway; or
- 143 (b)
- . (i) a public park whose primary purpose is:
- 144 (A) as a trail, path, or other way for walking, hiking, bicycling, or equestrian use; or
- 146 (B) to connect other trails, paths, or other ways for walking, hiking, bicycling, or equestrian use; or
- 148 (ii) a public park established on real property that is:
- 149 (A) a century farm; and
- 150 (B) located in a county of the first class.
- 151 (4)
- . (a) The right of eminent domain may not be exercised within a migratory bird production area created on or before December 31, 2020, under Title 23A, Chapter 13, Migratory Bird Production Area, except as follows:
- 154 (i) subject to Subsection (4)(b), an electric utility may condemn land within a migratory bird
production area located in a county of the first class only for the purpose of installing buried
power lines;
- 157 (ii) an electric utility may condemn land within a migratory bird production area in a county other
than a county of the first class to install:
- 159 (A) buried power lines; or
- 160 (B) a new overhead transmission line that is parallel to and abutting an existing overhead transmission
line or collocated within an existing overhead transmission line right of way; or
- 163 (iii) the Department of Transportation may exercise eminent domain for the purpose of the
construction of the West Davis Highway.
- 165 (b) Before exercising the right of eminent domain under Subsection (4)(a)(i), the electric utility shall
demonstrate that:

167

SB0139S01 compared with SB0139S02

- (i) the proposed condemnation would not have an unreasonable adverse effect on the preservation, use, and enhancement of the migratory bird production area; and
- 169 (ii) there is no reasonable alternative to constructing the power line within the boundaries of a migratory bird production area.
- 171 (5) If the intended public purpose is for a mining use, a private person may not exercise the power of eminent domain over property, or an interest in property, that is already used for a mining use within the boundary of:
- 174 (a) a permit area, as defined in Section 40-8-4;
- 175 (b) an area for which a permit has been issued by the Division of Water Quality, as part of the underground injection control program, under rules made by the Water Quality Board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 178 (c) private property; or
- 179 (d) an area under a state or federal lease.
- 180 (6)
- . (a) For the purpose of solar evaporation ponds and other facilities for the recovery of minerals in solution on or from the Great Salt Lake, a public use includes removal or extinguishment, by a state entity, in whole or in part, on Great Salt Lake Sovereign lands of:
- 184 (i) a solar evaporation pond;
- 185 (ii) improvements, property, easements, or rights-of-way appurtenant to a solar evaporation pond, including a lease hold; or
- 187 (iii) other facilities for the recovery of minerals or elements in solution.
- 188 (b) The public use under this Subsection (6) is in the furtherance of the benefits to public trust assets attributable to the Great Salt Lake under Section 65A-1-1.
- 190 (7)
- . ~~{(a) {Fee simple title to land may not be taken by eminent domain, unless:}}~~
- 191 ~~{(i) {the taking is for a purpose described in Subsection 78B-6-502(1); and}}~~
- 192 ~~{(ii) {the purpose for which the taking is proposed cannot be accomplished by taking an easement rather than taking fee simple title.}}~~
- 194 ~~{(b)}~~ (a) If fee simple title to land is taken through eminent domain, in accordance with Section 78B-6-502, the taking and the resulting title shall explicitly {exclude and reserve to each current

SB0139S01 compared with SB0139S02

- ~~owner~~ } identify the owner's interest in the mineral estate associated with the land, {~~unless taking the mineral estate is necessary for the purpose of the taking~~} in accordance with Subsection (7)(b).
- 198 {~~(e)~~} (b) If {~~in accordance with Subsection (7)(b), it is necessary to acquire~~} the mineral estate associated with the land is acquired by eminent domain:
- 200 (i) each interest in the mineral estate shall be identified and valued separately from all other estates, rights, and interests in the land; and
- 202 (ii) each owner with an interest in the mineral estate is entitled to separately receive just compensation for the owner's interest in the mineral estate.
- 278 Section 3. Section **78B-6-502** is amended to read:
- 279 **78B-6-502. Estates and rights that may be taken.**
- 280 (1)
- 207 Except as provided in Subsection 78B-6-501(3), (4), or (5), {~~and subject to Subsection~~
- ~~78B-6-501(7)~~, the following estates and rights in lands are subject to being taken for public use:
- 209 {~~(1)~~}
- 282 [(1)] (a) a fee simple, when taken for:
- 210 [(a)] (i) public buildings or grounds;
- 211 [(b)] (ii) permanent buildings;
- 212 [(c)] (iii) reservoirs and dams, and permanent flooding occasioned by them;
- 213 [(d)] (iv) any permanent flood control structure affixed to the land;
- 214 [(e)] (v) an outlet for a flow, a place for the deposit of debris or tailings of a mine, mill, smelter, or other place for the reduction of ores; and
- 216 [(f)] (vi) subject to Subsection 78B-6-501(6), solar evaporation ponds and other facilities for the recovery of minerals in solution, except when the surface ground is underlaid with minerals, coal, or other deposits sufficiently valuable to justify extraction, only a perpetual easement may be taken over the surface ground over the deposits;
- 220 [(2)] (b) an easement, when taken for any other use; and
- 221 [(3)] (c) the right of entry upon and occupation of lands, with the right to take from those lands earth, gravel, stones, trees, and timber as necessary for a public use.
- 297 (2) Fee simple title to land may not be taken by eminent domain unless the taking is for a purpose described in Subsection (1)(a).

SB0139S01 compared with SB0139S02

299 Section 4. **Effective date.**

This bill takes effect on May 7, 2025.

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