

Ronald M. Winterton proposes the following substitute bill:

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;
- requires for separate payment of just compensation for a mineral estate taken by eminent domain; and
- makes technical and conforming 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 2024, Chapters 25, 350

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

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

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

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

Limitations on eminent domain.

(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.
- 33 (c)(i) "Mining use" means:
- 34 (A) the full range of permitted or active activities, from prospecting and
- 35 exploration to reclamation and closure, associated with the exploitation of a
- 36 mineral deposit; and
- 37 (B) the use of the surface, subsurface, groundwater, and surface water of an area
- 38 in connection with the activities described in Subsection (1)(c)(i)(A) that have
- 39 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,
- 44 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
- 48 in solution;
- 49 (G) smelting, refining, autoclaving, or other primary or secondary processing
- 50 operation;
- 51 (H) the recovery of any mineral left in residue from a previous extraction or
- 52 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
- 55 of a building, structure, facility, equipment, machine, tool, or other material or
- 56 property that results from or is used in a surface or subsurface mining operation
- 57 or activity;
- 58 (K) an accessory, incidental, or ancillary activity or use, both active and passive,
- 59 including a utility, private way or road, pipeline, land excavation, working,
- 60 embankment, pond, gravel excavation, mining waste, conveyor, power line,
- 61 trackage, storage, reserve, passive use area, buffer zone, and power production
- 62 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
66 part, the right of eminent domain may be exercised on behalf of the following public
67 uses:

68 (a) all public uses authorized by the federal government;

69 (b) public buildings and grounds for the use of the state, and all other public uses
70 authorized by the Legislature;

71 (c)(i) public buildings and grounds for the use of any county, city, town, or board of
72 education;

73 (ii) reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water or
74 sewage, including to or from a development, for the use of the inhabitants of any
75 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
77 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
80 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
83 turnpike roads, roads for transportation by traction engines or road locomotives,
84 roads for logging or lumbering purposes, and railroads and street railways for public
85 transportation;

86 (e) reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and pipes for
87 the supplying of persons, mines, mills, smelters or other works for the reduction of
88 ores, with water for domestic or other uses, or for irrigation purposes, or for the
89 draining and reclaiming of lands, or for solar evaporation ponds and other facilities
90 for the recovery of minerals or elements in solution;

91 (f)(i) roads, railroads, tramways, tunnels, ditches, flumes, pipes, and dumping places
92 to access or facilitate the milling, smelting, or other reduction of ores, or the
93 working of mines, quarries, coal mines, or mineral deposits including oil, gas, and
94 minerals or elements in solution;

95 (ii) outlets, natural or otherwise, for the deposit or conduct of tailings, refuse or water
96 from mills, smelters or other works for the reduction of ores, or from mines,

- 97 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
100 formation in any land for the underground storage of natural gas, and in
101 connection with that, any other interests in property which may be required to
102 adequately examine, prepare, maintain, and operate underground natural gas
103 storage facilities;
104 (v) subject to Subsection (6), solar evaporation ponds and other facilities for the
105 recovery of minerals in solution; and
106 (vi) any occupancy in common by the owners or possessors of different mines,
107 quarries, coal mines, mineral deposits, mills, smelters, or other places for the
108 reduction of ores, or any place for the flow, deposit or conduct of tailings or refuse
109 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
114 power plants, or sites for the transmission of broadcast signals from a station licensed
115 by the Federal Communications Commission in accordance with 47 C.F.R. Part 73
116 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
122 storing water for the operation of machinery for the purpose of generating and
123 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
126 successful operation, including the right to take lands for the discharge and natural
127 distribution of smoke, fumes, and dust, produced by the operation of works, provided
128 that the powers granted by this section may not be exercised in any county where the
129 population exceeds 20,000, or within one mile of the limits of any city or
130 incorporated town nor unless the proposed condemner has the right to operate by

131 purchase, option to purchase or easement, at least 75% in value of land acreage
132 owned by persons or corporations situated within a radius of four miles from the mill,
133 smelter or other works for the reduction of ores; nor beyond the limits of the
134 four-mile radius; nor as to lands covered by contracts, easements, or agreements
135 existing between the condemner and the owner of land within the limit and providing
136 for the operation of such mill, smelter, or other works for the reduction of ores; nor
137 until an action shall have been commenced to restrain the operation of such mill,
138 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,
141 hiking, bicycling, equestrian use, or other recreational uses, or whose primary
142 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;

145 or

146 (B) to connect other trails, paths, or other ways for walking, hiking, bicycling, or
147 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

152 production area created on or before December 31, 2020, under Title 23A, Chapter

153 13, Migratory Bird Production Area, except as follows:

154 (i) subject to Subsection (4)(b), an electric utility may condemn land within a
155 migratory bird production area located in a county of the first class only for the
156 purpose of installing buried power lines;

157 (ii) an electric utility may condemn land within a migratory bird production area in a
158 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
161 overhead transmission line or collocated within an existing overhead
162 transmission line right of way; or

163 (iii) the Department of Transportation may exercise eminent domain for the purpose
164 of the construction of the West Davis Highway.

- 165 (b) Before exercising the right of eminent domain under Subsection (4)(a)(i), the electric
166 utility shall demonstrate that:
- 167 (i) the proposed condemnation would not have an unreasonable adverse effect on the
168 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
170 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
172 power of eminent domain over property, or an interest in property, that is already used
173 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
176 of the underground injection control program, under rules made by the Water Quality
177 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
181 minerals in solution on or from the Great Salt Lake, a public use includes removal or
182 extinguishment, by a state entity, in whole or in part, on Great Salt Lake Sovereign
183 lands of:
- 184 (i) a solar evaporation pond;
185 (ii) improvements, property, easements, or rights-of-way appurtenant to a solar
186 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
189 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
193 easement rather than taking fee simple title.
- 194 (b) If fee simple title to land is taken through eminent domain, the taking and the
195 resulting title shall explicitly exclude and reserve to each current owner the owner's
196 interest in the mineral estate associated with the land, unless taking the mineral estate
197 is necessary for the purpose of the taking.
- 198 (c) If, in accordance with Subsection (7)(b), it is necessary to acquire the mineral estate

199 associated with the land:

200 (i) each interest in the mineral estate shall be identified and valued separately from all
201 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
203 just compensation for the owner's interest in the mineral estate.

204 Section 2. Section **78B-6-502** is amended to read:

205 **78B-6-502 . Estates and rights that may be taken.**

206 Except as provided in Subsection 78B-6-501(3), (4), or (5), and subject to Subsection
207 78B-6-501(7), the following estates and rights in lands are subject to being taken for public
208 use:

209 (1) a fee simple, when taken for:

210 (a) public buildings or grounds;

211 (b) permanent buildings;

212 (c) reservoirs and dams, and permanent flooding occasioned by them;

213 (d) any permanent flood control structure affixed to the land;

214 (e) an outlet for a flow, a place for the deposit of debris or tailings of a mine, mill,
215 smelter, or other place for the reduction of ores; and

216 (f) subject to Subsection 78B-6-501(6), solar evaporation ponds and other facilities for
217 the recovery of minerals in solution, except when the surface ground is underlaid
218 with minerals, coal, or other deposits sufficiently valuable to justify extraction, only a
219 perpetual easement may be taken over the surface ground over the deposits;

220 (2) an easement, when taken for any other use; and

221 (3) the right of entry upon and occupation of lands, with the right to take from those lands
222 earth, gravel, stones, trees, and timber as necessary for a public use.

223 Section 3. **Effective Date.**

224 This bill takes effect on May 7, 2025.