

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:

- describes information about eminent domain and mineral rights that must be provided on the Office of the Property Rights Ombudsman's website;

- requires separate payment of just compensation for a mineral estate taken through eminent domain;

- 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.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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 **13-43-203** is amended to read:

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
- 31 land use law;
- 32 (b) clearly identify the specific information that is prepared for distribution to property
- 33 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
- 35 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
- 37 government, in analyzing actions with potential takings implications or other land use
- 38 issues;
- 39 (e) advise real property owners who:
- 40 (i) have a legitimate potential or actual takings claim against a state or local
- 41 government entity or have questions about takings, eminent domain, and land use
- 42 law; or
- 43 (ii) own a parcel of property that is landlocked, as to the owner's rights and options
- 44 with respect to obtaining access to a public street;
- 45 (f) identify state or local government actions that have potential takings implications
- 46 and, if appropriate, advise those state or local government entities about those
- 47 implications;
- 48 (g) provide information to private citizens, civic groups, government entities, and other
- 49 interested parties about takings, eminent domain, and land use law and their rights,
- 50 including a right to just compensation, and responsibilities under the takings, eminent
- 51 domain, or land use laws through seminars and publications, and by other appropriate
- 52 means;
- 53 (h)(i) ~~[provide the information described in Section 78B-6-505 on the Office of the~~
- 54 ~~Property Rights Ombudsman's website in a form that is easily accessible; and]~~
- 55 provide, in a form that is easily accessible, the following information on the
- 56 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
- 60 is taken through eminent domain;
- 61 (D) a notification that eminent domain may include taking a recorded interest held
- 62 in real property, including a mineral right;

- 63 (E) a notification that a property owner may be compensated for a recorded
64 interest in real property, including a mineral right; and
- 65 (F) a notification that a property owner can request a separate valuation for a
66 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
72 for any expenses required to provide the education and training described in
73 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
75 13-43-202, selects and proposes; and
- 76 (B) the property rights ombudsman and the executive director of the Department
77 of Commerce jointly approve.
- 78 (2)(a) Neither the Office of the Property Rights Ombudsman nor its individual attorneys
79 may represent private parties, state agencies, local governments, or any other
80 individual or entity in a legal action that arises from or relates to a matter addressed
81 in this chapter.
- 82 (b) An action by an attorney employed by the Office of the Property Rights
83 Ombudsman, by a neutral third party acting as mediator or arbitrator under Section
84 13-43-204, or by a neutral third party rendering an advisory opinion under Section
85 13-43-205 or 13-43-206, taken within the scope of the duties set forth in this chapter,
86 does not create an attorney-client relationship between the Office of the Property
87 Rights Ombudsman, or the office's attorneys or appointees, and an individual or
88 entity.
- 89 (3) No member of the Office of the Property Rights Ombudsman nor a neutral third party
90 rendering an advisory opinion under Section 13-43-205 or 13-43-206, may be compelled
91 to testify in a civil action filed concerning the subject matter of any review, mediation,
92 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
94 Property Rights Ombudsman and the opinions, writings, findings, and determinations
95 of the Office of the Property Rights Ombudsman are not admissible as evidence in a
96 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
100 78B, Chapter 11, Utah Uniform Arbitration Act;

101 (iii) actions for de novo review of an arbitration award or issue brought under the
102 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 --**

106 **Limitations on eminent domain.**

107 (1) As used in this section:

108 (a) "Century farm" means real property that is:

109 (i) assessed under Title 59, Chapter 2, Part 5, Farmland Assessment Act; and

110 (ii) owned or held by the same family for a continuous period of 100 years or more.

111 (b) "Mineral or element" means the same as that term is defined in Section 65A-17-101.

112 (c)(i) "Mining use" means:

113 (A) the full range of permitted or active activities, from prospecting and
114 exploration to reclamation and closure, associated with the exploitation of a
115 mineral deposit; and

116 (B) the use of the surface, subsurface, groundwater, and surface water of an area
117 in connection with the activities described in Subsection (1)(c)(i)(A) that have
118 been, are being, or will be conducted.

119 (ii) "Mining use" includes, whether conducted on-site or off-site:

120 (A) sampling, staking, surveying, exploration, or development activity;

121 (B) drilling, blasting, excavating, or tunneling;

122 (C) the removal, transport, treatment, deposition, and reclamation of overburden,
123 development rock, tailings, and other waste material;

124 (D) the recovery of sand and gravel;

125 (E) removal, transportation, extraction, beneficiation, or processing of ore;

126 (F) use of solar evaporation ponds and other facilities for the recovery of minerals
127 in solution;

128 (G) smelting, refining, autoclaving, or other primary or secondary processing
129 operation;

130 (H) the recovery of any mineral left in residue from a previous extraction or

- 131 processing operation;
- 132 (I) a mining activity that is identified in a work plan or permitting document;
- 133 (J) the use, operation, maintenance, repair, replacement, construction, or alteration
- 134 of a building, structure, facility, equipment, machine, tool, or other material or
- 135 property that results from or is used in a surface or subsurface mining operation
- 136 or activity;
- 137 (K) an accessory, incidental, or ancillary activity or use, both active and passive,
- 138 including a utility, private way or road, pipeline, land excavation, working,
- 139 embankment, pond, gravel excavation, mining waste, conveyor, power line,
- 140 trackage, storage, reserve, passive use area, buffer zone, and power production
- 141 facility;
- 142 (L) the construction of a storage, factory, processing, or maintenance facility; and
- 143 (M) an activity described in Subsection 40-8-4(17)(a).
- 144 (2) Except as provided in Subsections (3), (4), and (5) and subject to the provisions of this
- 145 part, the right of eminent domain may be exercised on behalf of the following public
- 146 uses:
- 147 (a) all public uses authorized by the federal government;
- 148 (b) public buildings and grounds for the use of the state, and all other public uses
- 149 authorized by the Legislature;
- 150 (c)(i) public buildings and grounds for the use of any county, city, town, or board of
- 151 education;
- 152 (ii) reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water or
- 153 sewage, including to or from a development, for the use of the inhabitants of any
- 154 county, city, or town, or for the draining of any county, city, or town;
- 155 (iii) the raising of the banks of streams, removing obstructions from streams, and
- 156 widening, deepening, or straightening their channels;
- 157 (iv) bicycle paths and sidewalks adjacent to paved roads;
- 158 (v) roads, byroads, streets, and alleys for public vehicular use, including for access to
- 159 a development; and
- 160 (vi) all other public uses for the benefit of any county, city, or town, or its inhabitants;
- 161 (d) wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and
- 162 turnpike roads, roads for transportation by traction engines or road locomotives,
- 163 roads for logging or lumbering purposes, and railroads and street railways for public
- 164 transportation;

- 165 (e) reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and pipes for
166 the supplying of persons, mines, mills, smelters or other works for the reduction of
167 ores, with water for domestic or other uses, or for irrigation purposes, or for the
168 draining and reclaiming of lands, or for solar evaporation ponds and other facilities
169 for the recovery of minerals or elements in solution;
- 170 (f)(i) roads, railroads, tramways, tunnels, ditches, flumes, pipes, and dumping places
171 to access or facilitate the milling, smelting, or other reduction of ores, or the
172 working of mines, quarries, coal mines, or mineral deposits including oil, gas, and
173 minerals or elements in solution;
- 174 (ii) outlets, natural or otherwise, for the deposit or conduct of tailings, refuse or water
175 from mills, smelters or other works for the reduction of ores, or from mines,
176 quarries, coal mines or mineral deposits including minerals or elements in solution;
- 177 (iii) mill dams;
- 178 (iv) gas, oil or coal pipelines, tanks or reservoirs, including any subsurface stratum or
179 formation in any land for the underground storage of natural gas, and in
180 connection with that, any other interests in property which may be required to
181 adequately examine, prepare, maintain, and operate underground natural gas
182 storage facilities;
- 183 (v) subject to Subsection (6), solar evaporation ponds and other facilities for the
184 recovery of minerals in solution; and
- 185 (vi) any occupancy in common by the owners or possessors of different mines,
186 quarries, coal mines, mineral deposits, mills, smelters, or other places for the
187 reduction of ores, or any place for the flow, deposit or conduct of tailings or refuse
188 matter;
- 189 (g) byroads leading from a highway to:
- 190 (i) a residence; or
191 (ii) a farm;
- 192 (h) telecommunications, electric light and electric power lines, sites for electric light and
193 power plants, or sites for the transmission of broadcast signals from a station licensed
194 by the Federal Communications Commission in accordance with 47 C.F.R. Part 73
195 and that provides emergency broadcast services;
- 196 (i) sewage service for:
- 197 (i) a city, a town, or any settlement of not fewer than 10 families;
198 (ii) a public building belonging to the state; or

- 199 (iii) a college or university;
- 200 (j) canals, reservoirs, dams, ditches, flumes, aqueducts, and pipes for supplying and
201 storing water for the operation of machinery for the purpose of generating and
202 transmitting electricity for power, light or heat;
- 203 (k) cemeteries and public parks; and
- 204 (l) sites for mills, smelters or other works for the reduction of ores and necessary to their
205 successful operation, including the right to take lands for the discharge and natural
206 distribution of smoke, fumes, and dust, produced by the operation of works, provided
207 that the powers granted by this section may not be exercised in any county where the
208 population exceeds 20,000, or within one mile of the limits of any city or
209 incorporated town nor unless the proposed condemner has the right to operate by
210 purchase, option to purchase or easement, at least 75% in value of land acreage
211 owned by persons or corporations situated within a radius of four miles from the mill,
212 smelter or other works for the reduction of ores; nor beyond the limits of the
213 four-mile radius; nor as to lands covered by contracts, easements, or agreements
214 existing between the condemner and the owner of land within the limit and providing
215 for the operation of such mill, smelter, or other works for the reduction of ores; nor
216 until an action shall have been commenced to restrain the operation of such mill,
217 smelter, or other works for the reduction of ores.
- 218 (3) The right of eminent domain may not be exercised on behalf of the following uses:
- 219 (a) except as provided in Subsection (2)(c)(iv), trails, paths, or other ways for walking,
220 hiking, bicycling, equestrian use, or other recreational uses, or whose primary
221 purpose is as a foot path, equestrian trail, bicycle path, or walkway; or
- 222 (b)(i) a public park whose primary purpose is:
- 223 (A) as a trail, path, or other way for walking, hiking, bicycling, or equestrian use;
224 or
- 225 (B) to connect other trails, paths, or other ways for walking, hiking, bicycling, or
226 equestrian use; or
- 227 (ii) a public park established on real property that is:
- 228 (A) a century farm; and
229 (B) located in a county of the first class.
- 230 (4)(a) The right of eminent domain may not be exercised within a migratory bird
231 production area created on or before December 31, 2020, under Title 23A, Chapter
232 13, Migratory Bird Production Area, except as follows:

- 233 (i) subject to Subsection (4)(b), an electric utility may condemn land within a
234 migratory bird production area located in a county of the first class only for the
235 purpose of installing buried power lines;
- 236 (ii) an electric utility may condemn land within a migratory bird production area in a
237 county other than a county of the first class to install:
- 238 (A) buried power lines; or
- 239 (B) a new overhead transmission line that is parallel to and abutting an existing
240 overhead transmission line or collocated within an existing overhead
241 transmission line right of way; or
- 242 (iii) the Department of Transportation may exercise eminent domain for the purpose
243 of the construction of the West Davis Highway.
- 244 (b) Before exercising the right of eminent domain under Subsection (4)(a)(i), the electric
245 utility shall demonstrate that:
- 246 (i) the proposed condemnation would not have an unreasonable adverse effect on the
247 preservation, use, and enhancement of the migratory bird production area; and
- 248 (ii) there is no reasonable alternative to constructing the power line within the
249 boundaries of a migratory bird production area.
- 250 (5) If the intended public purpose is for a mining use, a private person may not exercise the
251 power of eminent domain over property, or an interest in property, that is already used
252 for a mining use within the boundary of:
- 253 (a) a permit area, as defined in Section 40-8-4;
- 254 (b) an area for which a permit has been issued by the Division of Water Quality, as part
255 of the underground injection control program, under rules made by the Water Quality
256 Board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 257 (c) private property; or
- 258 (d) an area under a state or federal lease.
- 259 (6)(a) For the purpose of solar evaporation ponds and other facilities for the recovery of
260 minerals in solution on or from the Great Salt Lake, a public use includes removal or
261 extinguishment, by a state entity, in whole or in part, on Great Salt Lake Sovereign
262 lands of:
- 263 (i) a solar evaporation pond;
- 264 (ii) improvements, property, easements, or rights-of-way appurtenant to a solar
265 evaporation pond, including a lease hold; or
- 266 (iii) other facilities for the recovery of minerals or elements in solution.

267 (b) The public use under this Subsection (6) is in the furtherance of the benefits to public
 268 trust assets attributable to the Great Salt Lake under Section 65A-1-1.

269 (7)(a) If fee simple title to land is taken through eminent domain, in accordance with
 270 Section 78B-6-502, the taking and the resulting title shall explicitly identify the
 271 owner's interest in the mineral estate associated with the land, in accordance with
 272 Subsection (7)(b).

273 (b) If the mineral estate associated with the land is acquired by eminent domain:
 274 (i) each interest in the mineral estate shall be identified and valued separately from all
 275 other estates, rights, and interests in the land; and
 276 (ii) each owner with an interest in the mineral estate is entitled to separately receive
 277 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) Except as provided in Subsection 78B-6-501(3), (4), or (5), the following estates
 281 and rights in lands are subject to being taken for public use:

282 ~~[(1)]~~ (a) a fee simple, when taken for:

283 ~~[(a)]~~ (i) public buildings or grounds;

284 ~~[(b)]~~ (ii) permanent buildings;

285 ~~[(c)]~~ (iii) reservoirs and dams, and permanent flooding occasioned by them;

286 ~~[(d)]~~ (iv) any permanent flood control structure affixed to the land;

287 ~~[(e)]~~ (v) an outlet for a flow, a place for the deposit of debris or tailings of a mine,
 288 mill, smelter, or other place for the reduction of ores; and

289 ~~[(f)]~~ (vi) subject to Subsection 78B-6-501(6), solar evaporation ponds and other
 290 facilities for the recovery of minerals in solution, except when the surface ground
 291 is underlaid with minerals, coal, or other deposits sufficiently valuable to justify
 292 extraction, only a perpetual easement may be taken over the surface ground over
 293 the deposits;

294 ~~[(2)]~~ (b) an easement, when taken for any other use; and

295 ~~[(3)]~~ (c) the right of entry upon and occupation of lands, with the right to take from those
 296 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
 298 purpose described in Subsection (1)(a).

299 Section 4. **Effective Date.**

300 This bill takes effect on May 7, 2025.