

**EMINENT DOMAIN LIMITATION ON
POLITICAL SUBDIVISIONS**

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ben C. Ferry

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to political subdivisions' use of eminent domain.

Highlighted Provisions:

This bill:

► prohibits counties, cities, towns, and independent special districts from acquiring by eminent domain the rights to water that is outside their boundaries.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-8-2, as last amended by Chapters 136 and 254, Laws of Utah 2005

17-50-302, as last amended by Chapter 254, Laws of Utah 2005

78-34-1, as last amended by Chapter 164, Laws of Utah 1981

ENACTS:

17A-2-106, Utah Code Annotated 1953

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



Section 1. Section **10-8-2** is amended to read:

10-8-2. Appropriations -- Acquisition and disposal of property -- Municipal authority -- Corporate purpose -- Procedure -- Notice of intent to acquire real property.

(1) (a) A municipal legislative body may:

(i) appropriate money for corporate purposes only;

(ii) provide for payment of debts and expenses of the corporation;

(iii) subject to Subsections (4) and (5), purchase, receive, hold, sell, lease, convey, and dispose of real and personal property for the benefit of the municipality, whether the property is within or without the municipality's corporate boundaries;

(iv) improve, protect, and do any other thing in relation to this property that an individual could do; and

(v) subject to Subsection (2) and after first holding a public hearing, authorize municipal services or other nonmonetary assistance to be provided to or waive fees required to be paid by a nonprofit entity, whether or not the municipality receives consideration in return.

(b) A municipality may:

(i) furnish all necessary local public services within the municipality;

(ii) purchase, hire, construct, own, maintain and operate, or lease public utilities located and operating within and operated by the municipality; and

(iii) subject to Subsection (1)(c) and except as provided in Subsection (1)(d), acquire by eminent domain, or otherwise, property located inside or outside the corporate limits of the municipality and necessary for any of the purposes stated in Subsections (1)(b)(i) and (ii), subject to restrictions imposed by Title 78, Chapter 34, Eminent Domain, and general law for the protection of other communities.

(c) Each municipality that intends to acquire property by eminent domain under Subsection (1)(b) shall, upon the first contact with the owner of the property sought to be acquired, deliver to the owner a copy of a booklet or other materials provided by the property rights ombudsman, created under Section 63-34-13, dealing with the property owner's rights in an eminent domain proceeding.

(d) A municipality may not acquire by eminent domain the rights to water that is outside the municipality's boundaries.

~~[(d)]~~ (e) Except as provided in Subsection (1)(d), Subsection (1)(b) may not be

59 construed to diminish any other authority a municipality may claim to have under the law to
60 acquire by eminent domain property located inside or outside the municipality.

61 (2) Services or assistance provided pursuant to Subsection (1) (a)(v) is not subject to
62 the provisions of Subsection (3). The total amount of services or other nonmonetary assistance
63 provided or fees waived under Subsection (1) (a)(v) in any given fiscal year may not exceed
64 1% of the municipality's budget for that fiscal year.

65 (3) It is considered a corporate purpose to appropriate money for any purpose that, in
66 the judgment of the municipal legislative body, provides for the safety, health, prosperity,
67 moral well-being, peace, order, comfort, or convenience of the inhabitants of the municipality
68 subject to the following:

69 (a) The net value received for any money appropriated shall be measured on a
70 project-by-project basis over the life of the project.

71 (b) The criteria for a determination under this Subsection (3) shall be established by the
72 municipality's legislative body. A determination of value received, made by the municipality's
73 legislative body, shall be presumed valid unless it can be shown that the determination was
74 arbitrary, capricious, or illegal.

75 (c) The municipality may consider intangible benefits received by the municipality in
76 determining net value received.

77 (d) Prior to the municipal legislative body making any decision to appropriate any
78 funds for a corporate purpose under this section, a public hearing shall be held. Notice of the
79 hearing shall be published in a newspaper of general circulation at least 14 days prior to the
80 date of the hearing, or, if there is no newspaper of general circulation, by posting notice in at
81 least three conspicuous places within the municipality for the same time period.

82 (e) A study shall be performed before notice of the public hearing is given and shall be
83 made available at the municipality for review by interested parties at least 14 days immediately
84 prior to the public hearing, setting forth an analysis and demonstrating the purpose for the
85 appropriation. In making the study, the following factors shall be considered:

86 (i) what identified benefit the municipality will receive in return for any money or
87 resources appropriated;

88 (ii) the municipality's purpose for the appropriation, including an analysis of the way
89 the appropriation will be used to enhance the safety, health, prosperity, moral well-being,

90 peace, order, comfort, or convenience of the inhabitants of the municipality; and

91 (iii) whether the appropriation is necessary and appropriate to accomplish the
92 reasonable goals and objectives of the municipality in the area of economic development, job
93 creation, affordable housing, blight elimination, job preservation, the preservation of historic
94 structures and property, and any other public purpose.

95 (f) An appeal may be taken from a final decision of the municipal legislative body, to
96 make an appropriation. The appeal shall be filed within 30 days after the date of that decision,
97 to the district court. Any appeal shall be based on the record of the proceedings before the
98 legislative body. A decision of the municipal legislative body shall be presumed to be valid
99 unless the appealing party shows that the decision was arbitrary, capricious, or illegal.

100 (g) The provisions of this Subsection (3) apply only to those appropriations made after
101 May 6, 2002.

102 (h) This section shall only apply to appropriations not otherwise approved pursuant to
103 Title 10, Chapter 5, Uniform Fiscal Procedures Act for Utah Towns, or Title 10, Chapter 6,
104 Uniform Fiscal Procedures Act for Utah Cities.

105 (4) (a) Before a municipality may dispose of a significant parcel of real property, the
106 municipality shall:

107 (i) provide reasonable notice of the proposed disposition at least 14 days before the
108 opportunity for public comment under Subsection (4)(a)(ii); and

109 (ii) allow an opportunity for public comment on the proposed disposition.

110 (b) Each municipality shall, by ordinance, define what constitutes:

111 (i) a significant parcel of real property for purposes of Subsection (4)(a); and

112 (ii) reasonable notice for purposes of Subsection (4)(a)(i).

113 (5) (a) Except as provided in Subsection (5)(d), each municipality intending to acquire
114 real property for the purpose of expanding the municipality's infrastructure or other facilities
115 used for providing services that the municipality offers or intends to offer shall provide written
116 notice, as provided in this Subsection (5), of its intent to acquire the property if:

117 (i) the property is located:

118 (A) outside the boundaries of the municipality; and

119 (B) in a county of the first or second class; and

120 (ii) the intended use of the property is contrary to:

(A) the anticipated use of the property under the general plan of the county in whose unincorporated area or the municipality in whose boundaries the property is located; or

(B) the property's current zoning designation.

(b) Each notice under Subsection (5)(a) shall:

(i) indicate that the municipality intends to acquire real property;

(ii) identify the real property; and

(iii) be sent to:

(A) each county in whose unincorporated area and each municipality in whose boundaries the property is located; and

(B) each affected entity.

(c) A notice under this Subsection (5) is a protected record as provided in Subsection 63-2-304(7).

(d) (i) The notice requirement of Subsection (5)(a) does not apply if the municipality previously provided notice under Section 10-9a-203 identifying the general location within the municipality or unincorporated part of the county where the property to be acquired is located.

(ii) If a municipality is not required to comply with the notice requirement of Subsection (5)(a) because of application of Subsection (5)(d)(i), the municipality shall provide the notice specified in Subsection (5)(a) as soon as practicable after its acquisition of the real property.

Section 2. Section **17-50-302** is amended to read:

17-50-302. General county powers.

(1) A county may:

(a) as prescribed by statute, levy, assess, and collect taxes, borrow money, and levy and collect special assessments for benefits conferred; and

(b) provide services, exercise powers, and perform functions that are reasonably related to the safety, health, morals, and welfare of their inhabitants, except as limited or prohibited by statute.

(2) (a) A county may:

(i) sue and be sued;

(ii) subject to Subsection (2)[~~(c)~~] (d), acquire real property by tax sale, purchase, lease, contract, or gift, and hold the real property as necessary and proper for county purposes;

(iii) (A) subject to Subsection (2)(b) and except as provided in Subsection (2)(c),
acquire real property by condemnation, as provided in Title 78, Chapter 34, Eminent Domain;
and

(B) hold the real property as necessary and proper for county purposes;

(iv) as may be necessary to the exercise of its powers, acquire personal property by
purchase, lease, contract, or gift, and hold such personal property; and

(v) manage and dispose of its property as the interests of its inhabitants may require.

(b) (i) For purposes of Subsection (2)(a)(iii), water rights that are not appurtenant to
land do not constitute real property that may be acquired by the county through condemnation.

(ii) Nothing in Subsection (2)(a)(iii) may be construed to authorize a county to acquire
by condemnation the rights to water unless the land to which those water rights are appurtenant
is acquired by condemnation.

(c) A county may not acquire by eminent domain the rights to water that is outside the
county's boundaries.

~~(c)~~ (d) (i) Except as provided in Subsection (2)~~(c)~~(d)(iv), each county intending to
acquire real property for the purpose of expanding the county's infrastructure or other facilities
used for providing services that the county offers or intends to offer shall provide written
notice, as provided in this Subsection (2)~~(c)~~(d), of its intent to acquire the property if:

(A) the property is located:

(I) outside the boundaries of the unincorporated area of the county; and

(II) in a county of the first or second class; and

(B) the intended use of the property is contrary to:

(I) the anticipated use of the property under the general plan of the county in whose
unincorporated area or the municipality in whose boundaries the property is located; or

(II) the property's current zoning designation.

(ii) Each notice under Subsection (2)~~(c)~~(d)(i) shall:

(A) indicate that the county intends to acquire real property;

(B) identify the real property; and

(C) be sent to:

(I) each county in whose unincorporated area and each municipality in whose
boundaries the property is located; and

(II) each affected entity.

(iii) A notice under this Subsection (2)(~~(c)~~)(d) is a protected record as provided in Subsection 63-2-304(7).

(iv) (A) The notice requirement of Subsection (2)(~~(c)~~)(d)(i) does not apply if the county previously provided notice under Section 17-27a-203 identifying the general location within the municipality or unincorporated part of the county where the property to be acquired is located.

(B) If a county is not required to comply with the notice requirement of Subsection (2)(~~(c)~~)(d)(i) because of application of Subsection (2)(~~(c)~~)(d)(iv)(A), the county shall provide the notice specified in Subsection (2)(~~(c)~~)(d)(i) as soon as practicable after its acquisition of the real property.

Section 3. Section **17A-2-106** is enacted to read:

17A-2-106. Limitation on use of eminent domain.

Notwithstanding any other provision of law, an independent special district may not acquire by eminent domain the rights to water that is outside the boundaries of the independent special district.

Section 4. Section **78-34-1** is amended to read:

78-34-1. Uses for which right may be exercised.

Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

(1) [~~All~~] all public uses authorized by the Government of the United States[-];

(2) [~~Public~~] public buildings and grounds for the use of the state, and all other public uses authorized by the Legislature[-];

(3) [~~Public~~] public buildings and grounds for the use of any county, city or [~~incorporated~~] town, or board of education; reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water for the use of the inhabitants of any county [~~or~~], city, or [~~incorporated~~] town, or for the draining of any county, city, or [~~incorporated~~] town; the raising of the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys; and all other public uses for the benefit of any county, city, or [~~incorporated~~] town, or the inhabitants thereof[-], except the rights to water that is outside the boundaries of the county, city, or town, respectively;

214 (4) [~~Wharves,~~] wharves, docks, piers, chutes, booms, ferries, bridges, toll roads,
215 byroads, plank and turnpike roads, roads for transportation by traction engines or road
216 locomotives, roads for logging or lumbering purposes, and railroads and street railways for
217 public transportation[-];

218 (5) [~~Reservoirs,~~] reservoirs, dams, watergates, canals, ditches, flumes, tunnels,
219 aqueducts, and pipes for the supplying of persons, mines, mills, smelters, or other works for the
220 reduction of ores, with water for domestic or other uses, or for irrigation purposes, or for the
221 draining and reclaiming of lands, or for the floating of logs and lumber on streams not
222 navigable, or for solar evaporation ponds and other facilities for the recovery of minerals in
223 solution[-];

224 (6) [~~Roads,~~] roads, railroads, tramways, tunnels, ditches, flumes, pipes, and dumping
225 places to facilitate the milling, smelting, or other reduction of ores, or the working of mines,
226 quarries, coal mines, or mineral deposits including minerals in solution; outlets, natural or
227 otherwise, for the deposit or conduct of tailings, refuse, or water from mills, smelters, or other
228 works for the reduction of ores, or from mines, quarries, coal mines, or mineral deposits
229 including minerals in solution; mill dams; gas, oil or coal pipelines, tanks, or reservoirs,
230 including any subsurface stratum or formation in any land for the underground storage of
231 natural gas, and in connection therewith such other interests in property as may be required
232 adequately to examine, prepare, maintain, and operate such underground natural gas storage
233 facilities; and solar evaporation ponds and other facilities for the recovery of minerals in
234 solution; also any occupancy in common by the owners or possessors of different mines,
235 quarries, coal mines, mineral deposits, mills, smelters, or other places for the reduction of ores,
236 or any place for the flow, deposit, or conduct of tailings or refuse matter[-];

237 (7) [~~Byroads~~] byroads leading from highways to residences and farms[-];

238 (8) [~~Telegraph,~~] telegraph, telephone, electric light and electric power lines, and sites
239 for electric light and power plants[-];

240 (9) [~~Sewerage~~] sewerage of any city or town, or of any settlement of not less than ten
241 families, or of any public building belonging to the state, or of any college or university[-];

242 (10) [~~Canals,~~] canals, reservoirs, dams, ditches, flumes, aqueducts, and pipes for
243 supplying and storing water for the operation of machinery for the purpose of generating and
244 transmitting electricity for power, light, or heat[-];

245 (11) [~~Cemeteries~~] cemeteries and public parks[-];

246 (12) [~~Pipe-lines~~] pipelines for the purpose of conducting any and all liquids connected
247 with the manufacture of beet sugar[-]; and

248 (13) [~~Sites~~] sites for mills, smelters, or other works for the reduction of ores and
249 necessary to the successful operation thereof, including the right to take lands for the discharge
250 and natural distribution of smoke, fumes, and dust therefrom, produced by the operation of
251 such works; provided, that the powers granted by this subdivision shall not be exercised in any
252 county where the population exceeds [~~twenty thousand~~] 20,000, or within one mile of the limits
253 of any city or [~~incorporated~~] town; nor unless the proposed condemner has the right to operate
254 by purchase, option to purchase, or easement, at least [~~seventy-five per cent~~] 75% in value of
255 land acreage owned by persons or corporations situated within a radius of four miles from the
256 mill, smelter, or other works for the reduction of ores; nor beyond the limits of [~~said~~] the
257 four-mile radius; nor as to lands covered by contracts, easements, or agreements existing
258 between the condemner and the owner of land within [~~said~~] the limit and providing for the
259 operation of such mill, smelter, or other works for the reduction of ores; nor until an action
260 [~~shall have~~] has been commenced to restrain the operation of [~~such~~] the mill, smelter, or other
261 works for the reduction of ores.

Legislative Review Note

as of 11-28-05 6:39 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note**Bill Number HB0168****Eminent Domain Limitation on Political Subdivisions***01-Feb-06**11:32 AM*

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst