

**EMINENT DOMAIN AMENDMENTS**

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Howard A. Stephenson**

House Sponsor: David Ure

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to eminent domain.

**Highlighted Provisions:**

This bill:

**H→ ► expands the public uses for which eminent domain may be used to include bicycle paths and sidewalks adjacent to paved roads;**

**► narrows the public uses for which local governments may acquire roads, streets, or alleys by eminent domain;**

**► provides that the roads, streets, or alleys that local governments may acquire by eminent domain do not include trails, paths, or other ways for walking, hiking, bicycling, equestrian use, or other recreational uses; ←H**

**► requires the taking of property by a H→ [county, city, or town] political subdivision ←H to be approved by the**

**H→ [legislative] governing ←H body of the H→ [county, city, or town] political subdivision ←H ;**

**► requires the governing body of a political subdivision intending to take property by eminent domain to provide written notice to property owners of each public meeting to approve the taking and allow property owners the right to be heard regarding the proposed taking;**

**► modifies the duty to negotiate with a property owner and the duty to notify the property owner of certain rights and limitations with respect to an anticipated eminent domain action; and**

**► clarifies that those duties apply to each person seeking to acquire property involving**



22 the potential use of eminent domain if the property cannot be acquired in a  
23 voluntary transaction.

24 **Monies Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

29a **Ĥ→ 78-34-1, as last amended by Chapter 164, Laws of Utah 1981 ←Ĥ**30 **78-34-4, as last amended by Chapter 161, Laws of Utah 1981**31 **78-34-4.5, as enacted by Chapter 223, Laws of Utah 2004**

32

33 *Be it enacted by the Legislature of the state of Utah:*33a **Ĥ→ Section 1. Section 78-34-1 is amended to read:**33b **78-34-1. Uses for which right may be exercised.**33c **Subject to the provisions of this chapter, the right of eminent domain may be exercised in**  
33d **behalf of the following public uses:**33e **(1) All public uses authorized by the Government of the United States.**33f **(2) Public buildings and grounds for the use of the state, and all other public uses authorized**  
33g **by the Legislature.**33h **(3) Public buildings and grounds for the use of any county, city or incorporated town, or board**  
33i **of education; reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water for the use**  
33j **of the inhabitants of any county or city or incorporated town, or for the draining of any county, city or**  
33k **incorporated town; the raising of the banks of streams, removing obstructions therefrom, and**  
33l **widening, deepening or straightening their channels; bicycle paths and sidewalks adjacent to paved**  
33m **roads; roads, streets and alleys for public vehicular use, excluding trails, paths, or other ways for**  
33n **walking, hiking, bicycling, equestrian use, or other recreational uses ; and all other public uses**  
33o **for the benefit of any county, city or incorporated town, or the inhabitants thereof.**33p **(4) Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and**  
33q **turnpike roads, roads for transportation by traction engines or road locomotives, roads for logging or**  
33r **lumbering purposes, and railroads and street railways for public transportation.**33s **(5) Reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and pipes for the**  
33t **supplying of persons, mines, mills, smelters or other works for the reduction of ores, with water for**  
33u **domestic or other uses, or for irrigation purposes, or for the draining and reclaiming of lands, or for**  
33v **the floating of logs and lumber on streams not navigable, or for solar evaporation ponds and other**  
33w **facilities for the recovery of minerals in solution.**33x **(6) Roads, railroads, tramways, tunnels, ditches, flumes, pipes and dumping places to facilitate**  
33y **the milling, smelting or other reduction of ores, or the working of mines, quarries, coal mines or**  
33z **mineral deposits including minerals in solution; outlets, natural or otherwise, for the deposit or**  
33aa **conduct of tailings, refuse or water from mills, smelters or other works for the reduction of ores, or**  
33ab **from mines, quarries, coal mines or mineral deposits including minerals in solution; mill dams; gas, oil**  
33ac **or coal pipelines, tanks or reservoirs, including any subsurface stratum or formation in any land for**  
33ad **the underground storage of natural gas, and in connection therewith such other interests in**

33ae property as may be required adequately to examine, prepare, maintain, and operate such underground  
 33af natural gas storage facilities; and solar evaporation ponds and other facilities for the recovery of  
 33ag minerals in solution; also any occupancy in common by the owners or possessors of different mines,  
 33ah quarries, coal mines, mineral deposits, mills, smelters, or other places for the reduction of ores, or any  
 33ai place for the flow, deposit or conduct of tailings or refuse matter.

33aj (7) Byroads leading from highways to residences and farms.

33ak (8) Telegraph, telephone, electric light and electric power lines, and sites for electric light and  
 33al power plants.

33am (9) Sewerage of any city or town, or of any settlement of not less than ten families, or of any  
 33an public building belonging to the state, or of any college or university.

33ao (10) Canals, reservoirs, dams, ditches, flumes, aqueducts and pipes for supplying and storing  
 33ap water for the operation of machinery for the purpose of generating and transmitting electricity for  
 33aq power, light or heat.

33ar (11) Cemeteries and public parks.

33as (12) Pipe lines for the purpose of conducting any and all liquids connected with the  
 33at manufacture of beet sugar.

33au (13) Sites for mills, smelters or other works for the reduction of ores and necessary to the  
 33av successful operation thereof, including the right to take lands for the discharge and natural  
 33aw distribution of smoke, fumes and dust therefrom, produced by the operation of such works; provided,  
 33ax that the powers granted by this subdivision shall not be exercised in any county where the population  
 33ay exceeds twenty thousand, or within one mile of the limits of any city or incorporated town; nor unless  
 33az the proposed condemner has the right to operate by purchase, option to purchase or easement, at least  
 33ba seventy-five per cent in value of land acreage owned by persons or corporations situated within a  
 33bb radius of four miles from the mill, smelter or other works for the reduction of ores; nor beyond the  
 33bc limits of said four-mile radius; nor as to lands covered by contracts, easements or agreements existing  
 33bd between the condemner and the owner of land within said limit and providing for the operation of  
 33be such mill, smelter or other works for the reduction of ores; nor until an action shall have been  
 33bf commenced to restrain the operation of such mill, smelter or other works for the reduction  
 33bg of ores. ←H

34 Section H→ [1] 2 ←H . Section 78-34-4 is amended to read:

35 **78-34-4. Conditions precedent to taking.**

36 (1) Before property can be taken it must appear:

37 [(1)] (a) that the use to which it is to be applied is a use authorized by law;

38 [(2)] (b) that the taking is necessary to such use;

39 [(3)] (c) that construction and use of all property sought to be condemned will

40 commence within a reasonable time as determined by the court, after the initiation of

41 proceedings under this chapter; and

42 [(4)] (d) if already appropriated to some public use, that the public use to which it is to

43 be applied is a more necessary public use.

44 ~~Ĥ→ [(2) Property may not be taken by a county, city, or town unless the legislative body of~~  
 45 ~~the county, city, or town approves the taking.~~

46 ~~(3)~~ (2) ←Ĥ (a) As used in this Subsection ~~Ĥ→ [(3) (2) ←Ĥ~~ , "governing body" means:  
 47 (i) for a county, city, or town, the legislative body of the county, city, or town; and  
 48 (ii) for any other political subdivision of the state, the person or body with authority to  
 49 govern the affairs of the political subdivision.

49a ~~Ĥ→ (b) Property may not be taken by a political subdivision of the state unless the~~  
 49b ~~governing body of the political subdivision approves the taking.~~

50 ~~[(b)] (c) ←Ĥ Before~~ ~~Ĥ→ [voting to approve the taking of property]~~ ~~taking a final vote to~~  
 50a1 ~~approve~~  
 50a ~~the filing of an eminent domain action ←Ĥ~~ , the governing body of each  
 51 political subdivision intending to take property shall provide written notice to each owner of  
 52 property to be taken of each public meeting of the political subdivision's governing body at  
 53 which a vote on the proposed taking is expected to occur and allow the property owner the  
 54 opportunity to be heard on the proposed taking.

54a ~~Ĥ→ [(c)] (d) The requirement under Subsection (3)(b) to provide notice to a property~~  
 54b1 ~~owner~~  
 54b ~~is satisfied by the governing body mailing the written notice to the property owner:~~

54c (i) ~~at the owner's address as shown on the records of the county assessor's office; and~~  
 54d (ii) ~~at least ten business days before the public meeting.~~ ←Ĥ

55 Section ~~Ĥ→ [2] 3 ←Ĥ~~ . Section 78-34-4.5 is amended to read:

56 **78-34-4.5. Negotiation and disclosure required before eminent domain action.**

57 Each person who seeks to acquire property by eminent domain or who intends to use  
 58 eminent domain to acquire property if the property cannot be acquired in a voluntary



59 transaction shall:

60 (1) before ~~H→~~ **[voting] taking a final vote ←H** to approve the ~~H→~~ **[taking of property or**  
60a **initiating] filing of ←H** an eminent domain

61 action, make a reasonable effort to negotiate with the property owner for the purchase of the  
62 property; and

63 (2) as early in the negotiation process under Subsection (1) as practicable but no later  
64 than 14 days before [the] ~~H→~~ **[voting to approve the taking of property or] a final vote is taken to**  
64a **approve the ←H** filing ~~H→~~ **[f] of [f] ←H** an eminent

65 domain action, unless the court for good cause allows a shorter period before filing:

66 (a) advise the property owner of the owner's rights to mediation and arbitration under  
67 Section 78-34-21, including the name and current telephone number of the property rights  
68 ombudsman, established in Section 63-34-13; and

69 (b) provide the property owner a written statement explaining that oral representations  
70 or promises made during the negotiation process are not binding upon the person seeking to  
71 acquire the property by eminent domain.

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**Legislative Review Note**  
**as of 10-18-05 11:27 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**