

EMINENT DOMAIN AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Howard A. Stephenson

House Sponsor: David Ure

LONG TITLE

General Description:

This bill modifies provisions related to eminent domain.

Highlighted Provisions:

This bill:

- ▶ 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;
- ▶ requires the taking of property by a political subdivision to be approved by the governing body of the political subdivision;
- ▶ 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 the potential use of eminent domain if the property cannot be acquired in a

30 voluntary transaction.

31 **Monies Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **78-34-1**, as last amended by Chapter 164, Laws of Utah 1981

38 **78-34-4**, as last amended by Chapter 161, Laws of Utah 1981

39 **78-34-4.5**, as enacted by Chapter 223, Laws of Utah 2004



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

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

43 **78-34-1. Uses for which right may be exercised.**

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

46 (1) All public uses authorized by the Government of the United States.

47 (2) Public buildings and grounds for the use of the state, and all other public uses
48 authorized by the Legislature.

49 (3) Public buildings and grounds for the use of any county, city or incorporated town,
50 or board of education; reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting
51 water for the use of the inhabitants of any county or city or incorporated town, or for the
52 draining of any county, city or incorporated town; the raising of the banks of streams, removing
53 obstructions therefrom, and widening, deepening or straightening their channels; bicycle paths
54 and sidewalks adjacent to paved roads; roads, streets and alleys for public vehicular use,
55 excluding trails, paths, or other ways for walking, hiking, bicycling, equestrian use, or other
56 recreational uses; and all other public uses for the benefit of any county, city or incorporated
57 town, or the inhabitants thereof.

58 (4) Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank
59 and turnpike roads, roads for transportation by traction engines or road locomotives, roads for
60 logging or lumbering purposes, and railroads and street railways for public transportation.

61 (5) Reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and pipes
62 for the supplying of persons, mines, mills, smelters or other works for the reduction of ores,
63 with water for domestic or other uses, or for irrigation purposes, or for the draining and
64 reclaiming of lands, or for the floating of logs and lumber on streams not navigable, or for solar
65 evaporation ponds and other facilities for the recovery of minerals in solution.

66 (6) Roads, railroads, tramways, tunnels, ditches, flumes, pipes and dumping places to
67 facilitate the milling, smelting or other reduction of ores, or the working of mines, quarries,
68 coal mines or mineral deposits including minerals in solution; outlets, natural or otherwise,
69 for the deposit or conduct of tailings, refuse or water from mills, smelters or other works for
70 the reduction of ores, or from mines, quarries, coal mines or mineral deposits including
71 minerals in solution; mill dams; gas, oil or coal pipelines, tanks or reservoirs, including any
72 subsurface stratum or formation in any land for the underground storage of natural gas, and in
73 connection therewith such other interests in property as may be required adequately to
74 examine, prepare, maintain, and operate such underground natural gas storage facilities; and
75 solar evaporation ponds and other facilities for the recovery of minerals in solution; also any
76 occupancy in common by the owners or possessors of different mines, quarries, coal mines,
77 mineral deposits, mills, smelters, or other places for the reduction of ores, or any place for the
78 flow, deposit or conduct of tailings or refuse matter.

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

80 (8) Telegraph, telephone, electric light and electric power lines, and sites for electric
81 light and power plants.

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

84 (10) Canals, reservoirs, dams, ditches, flumes, aqueducts and pipes for supplying and
85 storing water for the operation of machinery for the purpose of generating and transmitting

86 electricity for power, light or heat.

87 (11) Cemeteries and public parks.

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

90 (13) Sites for mills, smelters or other works for the reduction of ores and necessary to
91 the successful operation thereof, including the right to take lands for the discharge and natural
92 distribution of smoke, fumes and dust therefrom, produced by the operation of such works;
93 provided, that the powers granted by this subdivision shall not be exercised in any county
94 where the population exceeds twenty thousand, or within one mile of the limits of any city or
95 incorporated town; nor unless the proposed condemner has the right to operate by purchase,
96 option to purchase or easement, at least seventy-five per cent in value of land acreage owned by
97 persons or corporations situated within a radius of four miles from the mill, smelter or other
98 works for the reduction of ores; nor beyond the limits of said four-mile radius; nor as to lands
99 covered by contracts, easements or agreements existing between the condemner and the owner
100 of land within said limit and providing for the operation of such mill, smelter or other works
101 for the reduction of ores; nor until an action shall have been commenced to restrain the
102 operation of such mill, smelter or other works for the reduction of ores.

103 Section 2. Section **78-34-4** is amended to read:

104 **78-34-4. Conditions precedent to taking.**

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

106 [~~1~~] (a) that the use to which it is to be applied is a use authorized by law;

107 [~~2~~] (b) that the taking is necessary to such use;

108 [~~3~~] (c) that construction and use of all property sought to be condemned will
109 commence within a reasonable time as determined by the court, after the initiation of
110 proceedings under this chapter; and

111 [~~4~~] (d) if already appropriated to some public use, that the public use to which it is to
112 be applied is a more necessary public use.

113 (2) (a) As used in this Subsection (2), "governing body" means:

114 (i) for a county, city, or town, the legislative body of the county, city, or town; and
115 (ii) for any other political subdivision of the state, the person or body with authority to
116 govern the affairs of the political subdivision.

117 (b) Property may not be taken by a political subdivision of the state unless the
118 governing body of the political subdivision approves the taking.

119 (c) Before taking a final vote to approve the filing of an eminent domain action, the
120 governing body of each political subdivision intending to take property shall provide written
121 notice to each owner of property to be taken of each public meeting of the political
122 subdivision's governing body at which a vote on the proposed taking is expected to occur and
123 allow the property owner the opportunity to be heard on the proposed taking.

124 (d) The requirement under Subsection (2)(c) to provide notice to a property owner is
125 satisfied by the governing body mailing the written notice to the property owner:

- 126 (i) at the owner's address as shown on the records of the county assessor's office; and
- 127 (ii) at least ten business days before the public meeting.

128 Section 3. Section **78-34-4.5** is amended to read:

129 **78-34-4.5. Negotiation and disclosure required before voting to approve an**
130 **eminent domain action.**

131 Each person who seeks to acquire property by eminent domain or who intends to use
132 eminent domain to acquire property if the property cannot be acquired in a voluntary
133 transaction shall:

134 (1) before ~~initiating~~ taking a final vote to approve the filing of an eminent domain
135 action, make a reasonable effort to negotiate with the property owner for the purchase of the
136 property; and

137 (2) as early in the negotiation process under Subsection (1) as practicable but no later
138 than 14 days before a final vote is taken to approve the filing of an eminent domain action,
139 unless the court for good cause allows a shorter period before filing:

140 (a) advise the property owner of the owner's rights to mediation and arbitration under
141 Section 78-34-21, including the name and current telephone number of the property rights

142 ombudsman, established in Section 63-34-13; and
143 (b) provide the property owner a written statement explaining that oral representations
144 or promises made during the negotiation process are not binding upon the person seeking to
145 acquire the property by eminent domain.