

Representative Aaron Tilton proposes the following substitute bill:

EMINENT DOMAIN

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Aaron Tilton

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies provisions relating to eminent domain.

Highlighted Provisions:

This bill:

- ▶ establishes a task force to study issues related to eminent domain and provides for task force membership, duties, compensation, and reporting requirements;

- ▶ clarifies an exclusion from a public use relating to trails, paths, or other ways for walking, hiking, bicycling, equestrian use, or other recreational uses for which eminent domain may not be used;

- ▶ excludes emergency access ways and open land as public uses for which eminent domain may be used;

- ▶ excludes certain parks from the scope of what is a public use for purposes of eminent domain; and

- ▶ expresses legislative intent concerning S.B. 117 passed during the 2006 General Session and this bill.

Monies Appropriated in this Bill:

This bill appropriates:

- ▶ \$8,000 to the Senate; and



26 ▶ \$21,000 to the House of Representatives.

27 **Other Special Clauses:**

28 This bill provides an immediate effective date.

29 This bill provides a November 30, 2007 repeal date for certain sections of this bill.

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **78-34-1**, as last amended by Chapter 358, Laws of Utah 2006

33 **Uncodified Material Affected:**

34 ENACTS UNCODIFIED MATERIAL



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

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

38 **78-34-1. Uses for which right may be exercised.**

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

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

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

44 (3) (a) public buildings and grounds for the use of any county, city [~~or incorporated~~],
45 town, or board of education;

46 (b) reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water for the
47 use of the inhabitants of any county [~~or~~], city, or [~~incorporated~~] town, or for the draining of any
48 county, city, or [~~incorporated~~] town;

49 (c) the raising of the banks of streams, removing obstructions [~~therefrom~~] from
50 streams, and widening, deepening, or straightening their channels;

51 (d) bicycle paths and sidewalks adjacent to paved roads;

52 (e) roads, streets, and alleys for public vehicular use, excluding:

53 (i) trails, paths, or other ways for walking, hiking, bicycling, equestrian use, or other
54 recreational uses, or whose primary purpose is as a foot path, equestrian trail, bicycle path, or
55 walkway; and

56 (ii) paths, lanes, or other ways for emergency access; and

57 (f) all other public uses for the benefit of any county, city, or [~~incorporated~~] town, or
58 the inhabitants [~~thereof.~~] of a county, city, or town;

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

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

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

80 (7) byroads leading from highways to residences and farms[-];

81 (8) telegraph, telephone, electric light and electric power lines, and sites for electric
82 light and power plants[-];

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

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

88 (11) cemeteries and public parks[-], except for a park whose primary use is:
89 (a) as a trail, path, or other way for walking, hiking, bicycling, or equestrian use; or
90 (b) to connect other trails, paths, or other ways for walking, hiking, bicycling, or
91 equestrian use;

92 (12) pipe lines for the purpose of conducting any and all liquids connected with the
93 manufacture of beet sugar[-]; and

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

107 **Section 2. Eminent Domain Task Force -- Creation -- Membership -- Interim**
108 **rules followed -- Compensation -- Staff.**

109 (1) There is created the Eminent Domain Task Force consisting of the following 11
110 members:

111 (a) three members of the Senate appointed by the president of the Senate, no more than
112 two of whom may be from the same political party; and

113 (b) eight members of the House of Representatives appointed by the speaker of the
114 House of Representatives, no more than five of whom may be from the same political party.

115 (2) (a) The president of the Senate shall designate a member of the Senate appointed
116 under Subsection (1)(a) as a cochair of the task force.

117 (b) The speaker of the House of Representatives shall designate a member of the House
118 of Representatives appointed under Subsection (1)(b) as a cochair of the task force.

119 (3) In conducting its business, the task force shall comply with the rules of legislative
120 interim committees.

121 (4) Salaries and expenses of the members of the task force shall be paid in accordance
122 with Section 36-2-2 and Legislative Joint Rule 15.03.

123 (5) The Office of Legislative Research and General Counsel shall provide staff support
124 to the task force.

125 Section 3. **Duties -- Interim report.**

126 (1) The task force shall review and make recommendations on the following issues:

127 (a) the policy of the state regarding the public uses for which property may be taken by
128 eminent domain;

129 (b) whether current statutory provisions relating to eminent should be revised and
130 updated; and

131 (c) other issues relating to eminent domain that the task force considers appropriate.

132 (2) A final report, including any proposed legislation shall be presented to the Political
133 Subdivisions Interim Committee Interim Committee before November 30, 2007.

134 Section 4. **Appropriation.**

135 There is appropriated from the General Fund for fiscal year 2006-07 only:

136 (1) \$8,000 to the Senate to pay for the compensation and expenses of senators on the
137 task force; and

138 (2) \$21,000 to the House of Representatives to pay for the compensation and expenses
139 of representatives on the task force.

140 Section 5. **Legislative intent.**

141 (1) During the 2006 General Session, the Legislature passed S.B. 117, Eminent
142 Domain Amendments, which, among other things, amended Section 78-34-1 of the Utah Code
143 relating to the public uses for which eminent domain may be exercised. One of the changes to
144 Subsection 78-34-1(3) made by S.B. 117 was the addition of language to indicate that trails,
145 paths, or other ways for walking, hiking, bicycling, equestrian use, or other recreation uses are
146 excluded from the public uses for which eminent domain may be used. In addition, one of the
147 changes in this bill is to state an exception for a park whose primary use is as a trail, path, or
148 other way for walking, hiking, bicycling, or equestrian use or to connect other such trails,
149 paths, or ways.

150 (2) These changes to Section 78-34-1 made by S.B. 117 and this bill are efforts to state
151 explicitly existing principles of eminent domain that had not previously been as explicitly
152 stated. A clarification of the intent behind these changes will benefit all those applying and
153 interpreting this provision of the Utah Code. It is not the intent of the Legislature to affect any
154 action that has had final adjudication.

155 (3) The Legislature viewed Section 78-34-1, before the passage of S.B. 117 from the
156 2006 General Session, as excluding trails, paths, or other ways for walking, hiking, bicycling,
157 equestrian use, or other recreational uses, from the public uses for which eminent domain may
158 be used. The Legislature viewed Section 78-34-1, before the passage of this bill, as excluding
159 parks whose primary use is as a trail, path, or other way for walking, hiking, bicycling, or
160 equestrian use or to connect those trails, paths, or other ways, from the public uses for which
161 eminent domain may be used.

162 (4) In passing S.B. 117, it was the intent of the Legislature that the addition of new
163 language to Subsection 78-34-1(3) after the word "alleys" was to state explicitly those
164 enumerated exclusions that had not previously been as explicitly stated. In passing this bill, it
165 is the intent of the Legislature that the addition of new language to Subsection 78-34-1(11)
166 after the word "parks" is to state explicitly the enumerated exclusions that had not previously
167 been as explicitly stated.

168 Section 6. **Effective date.**

169 If approved by two-thirds of all the members elected to each house, this bill takes effect
170 upon approval by the governor, or the day following the constitutional time limit of Utah
171 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
172 the date of veto override.

173 Section 7. **Repeal date.**

174 Sections 2 through 4 of this bill are repealed November 30, 2007.

H.B. 334 3rd Sub. (Cherry) - Eminent Domain

Fiscal Note

2007 General Session
State of Utah

State Impact

Enactment of this bill will appropriate \$29,000 as a supplemental appropriation from General Fund one-time revenues in FY 2007 for a Legislative task force. The appropriation will include \$8,000 for the Senate and \$21,000 to the House of Representatives.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>
General Fund, One-Time	\$29,000	\$0	\$0	\$0	\$0	\$0
Total	\$29,000	\$0	\$0	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
