

**3rd Sub. H.B. 334**  
**EMINENT DOMAIN**

Representative **Ralph Becker** proposes the following amendments:

1. *Page 1, Line 1:*

1 EMINENT DOMAIN **TASK FORCE**

2. *Page 1, Lines 14 through 22:*

14 { ~~clarifies an exclusion from a public use relating to trails, paths, or other ways for~~  
15 ~~walking, hiking, bicycling, equestrian use, or other recreational uses for which~~  
16 ~~eminent domain may not be used;~~  
17 ~~excludes emergency access ways and open land as public uses for which eminent~~  
18 ~~domain may be used;~~  
19 ~~excludes certain parks from the scope of what is a public use for purposes of~~  
20 ~~eminent domain; and~~  
21 ~~expresses legislative intent concerning S.B. 117 passed during the 2006 General~~  
22 ~~Session and this bill. }~~

3. *Page 2, Line 29:*

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

4. *Page 2, Lines 31 through 32:*

31 ~~{ AMENDS:~~  
32 ~~78-34-1, as last amended by Chapter 358, Laws of Utah 2006 }~~

5. *Page 2, Line 37 through Page 4, Line 107:*

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~~} 1 . Eminent Domain Task Force -- Creation -- Membership -- Interim

6. Page 5, Line 125:

125 Section {~~3~~} 2 . Duties -- Interim report.

7. Page 5, Line 134:

134 Section {~~4~~} 3 . Appropriation.

8. Page 5, Line 140 through Page 6, Line 174:

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~~ } 4 . Repeal date.

174 { ~~Sections 2 through 4 of this~~ } This bill { ~~are~~ } is repealed November 30, 2007.