

**EMINENT DOMAIN AMENDMENTS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Aaron Tilton**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions relating to eminent domain.

**Highlighted Provisions:**

This bill:

▶ 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 as a public use for which eminent domain may be used; and

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

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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

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



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

29 **78-34-1. Uses for which right may be exercised.**

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

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

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

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

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

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

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

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

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

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

48 (f) all other public uses for the benefit of any county, city, or [~~incorporated~~] town, or  
49 [~~the~~] their inhabitants [~~thereof~~];

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

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

58 (6) roads, railroads, tramways, tunnels, ditches, flumes, pipes and dumping places to

59 facilitate the milling, smelting or other reduction of ores, or the working of mines, quarries,  
60 coal mines or mineral deposits including minerals in solution; outlets, natural or otherwise,  
61 for the deposit or conduct of tailings, refuse or water from mills, smelters or other works for  
62 the reduction of ores, or from mines, quarries, coal mines or mineral deposits including  
63 minerals in solution; mill dams; gas, oil or coal pipelines, tanks or reservoirs, including any  
64 subsurface stratum or formation in any land for the underground storage of natural gas, and in  
65 connection therewith such other interests in property as may be required adequately to  
66 examine, prepare, maintain, and operate such underground natural gas storage facilities; and  
67 solar evaporation ponds and other facilities for the recovery of minerals in solution; also any  
68 occupancy in common by the owners or possessors of different mines, quarries, coal mines,  
69 mineral deposits, mills, smelters, or other places for the reduction of ores, or any place for the  
70 flow, deposit or conduct of tailings or refuse matter[-];

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

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

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

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

79 (11) cemeteries and public parks[-], except for a park whose primary use is:

80 (a) as a trail, path, or other way for walking, hiking, bicycling, or equestrian use; or

81 (b) to connect other trails, paths, or other ways for walking, hiking, bicycling, or  
82 equestrian use;

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

85 (13) sites for mills, smelters or other works for the reduction of ores and necessary to  
86 the successful operation thereof, including the right to take lands for the discharge and natural  
87 distribution of smoke, fumes and dust therefrom, produced by the operation of such works;  
88 provided, that the powers granted by this subdivision shall not be exercised in any county

89 where the population exceeds [~~twenty thousand~~] 20,000, or within one mile of the limits of any

90 city or incorporated town; nor unless the proposed condemner has the right to operate by  
91 purchase, option to purchase or easement, at least [~~seventy-five per cent~~] 75% in value of land  
92 acreage owned by persons or corporations situated within a radius of four miles from the mill,  
93 smelter or other works for the reduction of ores; nor beyond the limits of said four-mile radius;  
94 nor as to lands covered by contracts, easements or agreements existing between the condemner  
95 and the owner of land within said limit and providing for the operation of such mill, smelter or  
96 other works for the reduction of ores; nor until an action shall have been commenced to restrain  
97 the operation of such mill, smelter or other works for the reduction of ores.

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**Legislative Review Note**  
as of 12-13-07 11:23 AM

**Office of Legislative Research and General Counsel**

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**H.B. 323 - Eminent Domain Amendments**

**Fiscal Note**

2008 General Session  
State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**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.

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