

28 Section 1. Section **78B-6-503.5** is amended to read:

29 **78B-6-503.5. Other property which may be taken -- State as plaintiff.**

30 (1) ~~H~~→ [Subject] Pursuant to the state's sovereign powers and the full and
 30a unconditional reservation of all rights related to those sovereign powers, and subject ←~~H~~ to
 30b Subsections (2) and (3), property which may be taken under this part
 31 includes property possessed by the federal government unless the property was acquired by the
 32 federal government with the consent of the Legislature and in accordance with the United
 33 States Constitution Article I, Section 8, Clause 17.

34 (2) The state or a political subdivision shall be the plaintiff described in Section
 35 78B-6-507 in an action to condemn property described in Subsection (1).

36 (3) The following do not apply to an action authorized under Subsection (1):

37 (a) Section 78B-6-505;

38 (b) Section 78B-6-520;

39 (c) Section 78B-6-521; and

40 (d) Title 57, Chapter 12, Utah Relocation Assistance Act.

41 Section 2. **Effective date.**

42 This bill takes effect on January 1, 2014.

Legislative Review Note as of 11-28-11 9:33 AM

As required by legislative rule and practice, the Office of Legislative Research and General Counsel provides the following legislative review note to assist the Legislature in making its own determination as to the constitutionality of the bill. The note is based on an analysis of relevant state and federal constitutional law as applied to the bill. The note is not written for the purpose of influencing whether the bill should become law, but is written to provide information relevant to legislators' consideration of this bill. The note is not a substitute for the judgment of the judiciary, which has authority to determine the constitutionality of a law in the context of a specific case.

This bill authorizes a political subdivision to exercise eminent domain authority on property possessed by the federal government unless the property is owned by the federal government in accordance with the U.S. Constitution article I, section 8, clause 17, also known as the "Enclave Clause." The U.S. Supreme Court has held that eminent domain authority, or the right to take and dispose land for public use and necessity, belongs to the sovereign government of the land (i.e. federal or state government). *See Pollard v. Hagan*, 44 U.S. 212, 223 (1845). This bill contests the U.S. Supreme Court's opinion that the federal government is the sovereign of public land or property acquired by the federal government in accordance with federal constitutional authority other than the Enclave Clause.