

EMINENT DOMAIN AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael E. Noel

Senate Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill amends eminent domain provisions of the Judicial Code to allow the taking of property for certain uses relating to oil and gas and to establish negotiation and notice requirements that must be fulfilled before an eminent domain action is filed.

Highlighted Provisions:

This bill:

- ▶ amends eminent domain provisions of the Judicial Code to allow the taking of property for certain uses relating to oil and gas;
- ▶ establishes negotiation and notice requirements that must be fulfilled before an eminent domain action is filed; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-6-501, as last amended by Laws of Utah 2011, Chapter 82

78B-6-505, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

Section 1. Section **78B-6-501** is amended to read:

30 **78B-6-501. Eminent domain -- Uses for which right may be exercised.**

31 Subject to the provisions of this part, the right of eminent domain may be exercised on
32 behalf of the following public uses:

33 (1) all public uses authorized by the federal government;

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

36 (3) (a) public buildings and grounds for the use of any county, city, town, or board of
37 education;

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

41 (c) the raising of the banks of streams, removing obstructions from streams, and
42 widening, deepening, or straightening their channels;

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

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

47 (f) all other public uses for the benefit of any county, city, or town, or its inhabitants;

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

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

56 (6) (a) roads, railroads, tramways, tunnels, ditches, flumes, pipes, and dumping places
57 to access or facilitate the milling, smelting, or other reduction of ores, or the working of mines,

- 58 quarries, coal mines, or mineral deposits including oil, gas, and minerals in solution;
- 59 (b) outlets, natural or otherwise, for the deposit or conduct of tailings, refuse or water
- 60 from mills, smelters or other works for the reduction of ores, or from mines, quarries, coal
- 61 mines or mineral deposits including minerals in solution;
- 62 (c) mill dams;
- 63 (d) gas, oil or coal pipelines, tanks or reservoirs, including any subsurface stratum or
- 64 formation in any land for the underground storage of natural gas, and in connection with that,
- 65 any other interests in property which may be required to adequately examine, prepare,
- 66 maintain, and operate underground natural gas storage facilities;
- 67 (e) solar evaporation ponds and other facilities for the recovery of minerals in solution;
- 68 and
- 69 (f) any occupancy in common by the owners or possessors of different mines, quarries,
- 70 coal mines, mineral deposits, mills, smelters, or other places for the reduction of ores, or any
- 71 place for the flow, deposit or conduct of tailings or refuse matter;
- 72 (7) byroads leading from a highway to:
- 73 (a) a residence;
- 74 (b) a development; or
- 75 (c) a farm;
- 76 (8) telegraph, telephone, electric light and electric power lines, and sites for electric
- 77 light and power plants;
- 78 (9) sewage service for:
- 79 (a) a city, a town, or any settlement of not less than 10 families;
- 80 (b) a development;
- 81 (c) a public building belonging to the state; or
- 82 (d) a college or university;
- 83 (10) canals, reservoirs, dams, ditches, flumes, aqueducts, and pipes for supplying and
- 84 storing water for the operation of machinery for the purpose of generating and transmitting
- 85 electricity for power, light or heat;

86 (11) cemeteries and public parks, except for a park whose primary use is:

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

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

90 (12) pipe lines for the purpose of conducting any and all liquids connected with the
91 manufacture of beet sugar; and

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

105 Section 2. Section **78B-6-505** is amended to read:

106 **78B-6-505. Negotiation and disclosure required before filing an eminent domain**
107 **action.**

108 ~~[Each person who]~~ (1) A political subdivision of the state that seeks to acquire property
109 by eminent domain or ~~[who]~~ that intends to use eminent domain to acquire property if the
110 property cannot be acquired in a voluntary transaction shall:

111 ~~[(+)]~~ (a) before ~~[taking]~~ the governing body, as defined in Subsection 78B-6-504(2)(a),
112 of the political subdivision takes a final vote to approve the filing of an eminent domain action,
113 make a reasonable effort to negotiate with the property owner for the purchase of the property;

114 and

115 ~~[(2)]~~ (b) except as provided in Subsection (3), as early in the negotiation process
116 ~~[under]~~ described in Subsection (1)(a) as practicable, but no later than 14 days before the day
117 on which a final vote is taken to approve the filing of an eminent domain action~~[, unless the~~
118 ~~court for good cause allows a shorter period before filing]:~~

119 ~~[(a)]~~ (i) advise the property owner of the owner's rights to mediation and arbitration
120 under Section 78B-6-522, including the name and current telephone number of the property
121 rights ombudsman, established in Title 13, Chapter 43, Property Rights Ombudsman Act; and

122 ~~[(b)]~~ (ii) provide the property owner a written statement explaining that oral
123 representations or promises made during the negotiation process are not binding upon the
124 person seeking to acquire the property by eminent domain.

125 (2) A person, other than a political subdivision of the state, that seeks to acquire
126 property by eminent domain or that intends to use eminent domain to acquire property if the
127 property cannot be acquired in a voluntary transaction shall:

128 (a) before filing an eminent domain action, make a reasonable effort to negotiate with
129 the property owner for the purchase of the property; and

130 (b) except as provided in Subsection (3), as early in the negotiation process described
131 in Subsection (2)(a) as practicable, but no later than 14 days before the day on which the person
132 files an eminent domain action:

133 (i) advise the property owner of the owner's rights to mediation and arbitration under
134 Section 78B-6-522, including the name and current telephone number of the property rights
135 ombudsman, established in Title 13, Chapter 43, Property Rights Ombudsman Act; and

136 (ii) provide the property owner a written statement explaining that oral representations
137 or promises made during the negotiation process are not binding upon the person seeking to
138 acquire the property by eminent domain.

139 (3) The court may, for good cause, shorten the 14-day period described in Subsection
140 (1)(b) or (2)(b).