

HB0074S01 compared with HB0074

~~{deleted text}~~ shows text that was in HB0074 but was deleted in HB0074S01.

inserted text shows text that was not in HB0074 but was inserted into HB0074S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

Representative Michael E. Noel proposes the following substitute bill:

EMINENT DOMAIN AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael E. Noel

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends eminent domain provisions of the Judicial Code to allow the taking of property for ~~{roads necessary to provide access for exploration, development, or production of oil or gas}~~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:

- ▶ ~~{permits a person to bring an}~~amends eminent domain ~~{action for roads necessary to provide access for exploration, development, or production of oil or gas, if the person first complies with the}~~provisions of the Judicial Code to allow the taking of property for certain uses relating to oil and gas;
- ▶ establishes negotiation and notice requirements ~~{described in this bill}~~that must be

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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:

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

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

- (1) all public uses authorized by the federal government;
- (2) public buildings and grounds for the use of the state, and all other public uses authorized by the Legislature;
- (3) (a) public buildings and grounds for the use of any county, city, town, or board of education;
- (b) reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water for the use of the inhabitants of any county, city, or town, or for the draining of any county, city, or town;
- (c) the raising of the banks of streams, removing obstructions from streams, and widening, deepening, or straightening their channels;
- (d) bicycle paths and sidewalks adjacent to paved roads;
- (e) roads, streets, and alleys for public vehicular use, excluding trails, paths, or other ways for walking, hiking, bicycling, equestrian use, or other recreational uses, or whose primary purpose is as a foot path, equestrian trail, bicycle path, or walkway; and
- (f) all other public uses for the benefit of any county, city, or town, or its inhabitants;

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

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

(6) (a) roads, railroads, tramways, tunnels, ditches, flumes, pipes, and dumping places to access or facilitate the milling, smelting, or other reduction of ores, or the working of mines, quarries, coal mines, or mineral deposits including oil, gas, and minerals in solution;

(b) outlets, natural or otherwise, for the deposit or conduct of tailings, refuse or water from mills, smelters or other works for the reduction of ores, or from mines, quarries, coal mines or mineral deposits including minerals in solution;

(c) mill dams;

(d) gas, oil or coal pipelines, tanks or reservoirs, including any subsurface stratum or formation in any land for the underground storage of natural gas, and in connection with that, any other interests in property which may be required to adequately examine, prepare, maintain, and operate underground natural gas storage facilities;

(e) solar evaporation ponds and other facilities for the recovery of minerals in solution;
~~{}~~and~~{}~~

(f) any occupancy in common by the owners or possessors of different mines, quarries, coal mines, mineral deposits, mills, smelters, or other places for the reduction of ores, or any place for the flow, deposit or conduct of tailings or refuse matter;~~{ and}~~

~~{ (g) roads necessary to provide access for exploration, development, or production of oil or gas, if, before initiating an action, the party seeking eminent domain:~~

~~—— (i) makes a reasonable effort to negotiate with the property owner for the use of the property:~~

~~—— (ii) advises the property owner of the property owner's rights to mediation and arbitration under Section 78B-6-522;~~

~~—— (iii) makes, through certified mail, an initial written settlement offer to the owner of~~

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~~record, as shown on the records in the county recorder's office, that includes:~~

~~—— (A) a description of the general location and extent of the access sought, with sufficient detail for reasonable identification;~~

~~—— (B) an offer to, at the property owner's request, have a representative of the condemner tour the property sought with the owner or the owner's representative, at a mutually agreeable time, to discuss issues related to the property sought and the initial offer;~~

~~—— (C) an estimate of the fair market value of the property sought and the general basis for the estimate; and~~

~~—— (D) a proposal detailing the reclamation planned by the condemner for the property disturbed by the condemner's project; and~~

~~—— (iv) provides the owner of record an opportunity to, within at least 30 days after the day on which the party seeking eminent domain sends the initial written settlement offer:~~

~~—— (A) accept the offer, in writing; or~~

~~—— (B) make a counter-offer, in writing;~~

‡ (7) byroads leading from a highway to:

(a) a residence;

(b) a development; or

(c) a farm;

(8) telegraph, telephone, electric light and electric power lines, and sites for electric

light and power plants;

(9) sewage service for:

(a) a city, a town, or any settlement of not less than 10 families;

(b) a development;

(c) a public building belonging to the state; or

(d) a college or university;

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

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

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

(b) to connect other trails, paths, or other ways for walking, hiking, bicycling, or

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equestrian use;

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

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

†

Legislative Review Note

— as of ~~1-10-12 11:59 AM~~

— ~~Office of Legislative Research and General Counsel~~; Section 2. Section 78B-6-505 is amended to read:

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

[Each person who] (1) A government entity that seeks to acquire property by eminent domain or who intends to use eminent domain to acquire property if the property cannot be acquired in a voluntary transaction shall:

[(†)] (a) before taking a final vote to approve the filing of an eminent domain action,

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make a reasonable effort to negotiate with the property owner for the purchase of the property;
and

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

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

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

(2) A person, other than a government entity, that seeks to acquire property by eminent
domain or that intends to use eminent domain to acquire property if the property cannot be
acquired in a voluntary transaction shall:

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

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

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

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

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