

EMINENT DOMAIN AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lee B. Perry

Senate Sponsor: Scott K. Jenkins

LONG TITLE

General Description:

This bill enacts language related to an entity's power of eminent domain.

Highlighted Provisions:

This bill:

- ▶ enacts provisions that require the Office of the Property Rights Ombudsman to provide certain information on its website;
- ▶ amends provisions related to the proposes for which eminent domain may be used;
- ▶ enacts provisions that require a political subdivision, or a person who seeks to acquire property by eminent domain, to provide a property owner with certain information from the Office of the Property Rights Ombudsman; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-43-203, as last amended by Laws of Utah 2008, Chapters 3, 84, and 382

78B-6-501, as last amended by Laws of Utah 2012, Chapter 264

78B-6-505, as last amended by Laws of Utah 2012, Chapter 264

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

30 Section 1. Section **13-43-203** is amended to read:

31 **13-43-203. Office of the Property Rights Ombudsman -- Duties.**

32 (1) (a) The Office of the Property Rights Ombudsman shall:

33 [~~(a)~~] (i) develop and maintain expertise in and understanding of takings, eminent
34 domain, and land use law;

35 (ii) clearly identify the specific information that is prepared for distribution to property
36 owners whose land is being acquired under the provisions of Section 78B-6-505;

37 [~~(b)~~] (iii) assist state agencies and local governments in developing the guidelines
38 required by Title 63L, Chapter 4, Constitutional Taking Issues;

39 [~~(c)~~] (iv) at the request of a state agency or local government, assist the state agency or
40 local government, in analyzing actions with potential takings implications or other land use
41 issues;

42 [~~(d)~~] (v) advise real property owners who:

43 [~~(i)~~] (A) have a legitimate potential or actual takings claim against a state or local
44 government entity or have questions about takings, eminent domain, and land use law; or

45 [~~(ii)~~] (B) own a parcel of property that is landlocked, as to the owner's rights and
46 options with respect to obtaining access to a public street;

47 [~~(e)~~] (vi) identify state or local government actions that have potential takings
48 implications and, if appropriate, advise those state or local government entities about those
49 implications; and

50 [~~(f)~~] (vii) provide information to private citizens, civic groups, government entities,
51 and other interested parties about takings, eminent domain, and land use law and their rights,
52 including a right to just compensation, and responsibilities under the takings, eminent domain,
53 or land use laws through seminars and publications, and by other appropriate means.

54 (b) The Office of the Property Rights Ombudsman shall:

55 (i) provide the information described in Section 78B-6-505 on its website in a form
56 that is easily accessible; and

57 (ii) ensure that the information is current.

58 (2) The Office of the Property Rights Ombudsman may not represent private property
59 owners, state agencies, or local governments in court or in adjudicative proceedings under Title
60 63G, Chapter 4, Administrative Procedures Act.

61 (3) No member of the Office of the Property Rights Ombudsman nor a neutral third
62 party rendering an advisory opinion under Section 13-43-205 or 13-43-206, may be compelled
63 to testify in a civil action filed concerning the subject matter of any review, mediation, or
64 arbitration by, or arranged through, the office.

65 (4) (a) Except as provided in Subsection (4)(b), evidence of a review by the Office of
66 the Property Rights Ombudsman and the opinions, writings, findings, and determinations of the
67 Office of the Property Rights Ombudsman are not admissible as evidence in a judicial action.

68 (b) Subsection (4)(a) does not apply to:

69 (i) actions brought under authority of Title 78A, Chapter 8, Small Claims Courts;

70 (ii) a judicial confirmation or review of the arbitration itself as authorized in Title 78B,
71 Chapter 11, Utah Uniform Arbitration Act;

72 (iii) actions for de novo review of an arbitration award or issue brought under the
73 authority of Subsection 13-43-204(3)(a)(i); or

74 (iv) advisory opinions provided for in Sections 13-43-205 and 13-43-206.

75 Section 2. Section **78B-6-501** is amended to read:

76 **78B-6-501. Eminent domain -- Uses for which right may be exercised.**

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

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

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

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

84 (b) reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water or
85 sewage, including to or from a development, for the use of the inhabitants of any county, city,

86 or town, or for the draining of any county, city, or town;

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

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

90 (e) roads, byroads, streets, and alleys for public vehicular use, including for access to a
91 development, excluding trails, paths, or other ways for walking, hiking, bicycling, equestrian
92 use, or other recreational uses, or whose primary purpose is as a foot path, equestrian trail,
93 bicycle path, or walkway; and

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

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

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

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

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

109 (c) mill dams;

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

114 (e) solar evaporation ponds and other facilities for the recovery of minerals in solution;
115 and

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

119 (7) byroads leading from a highway to:

120 (a) a residence; or

121 [~~(b)~~ a development; or]

122 [~~(c)~~] (b) a farm;

123 (8) telegraph, telephone, electric light and electric power lines, and sites for electric
124 light and power plants;

125 (9) sewage service for:

126 (a) a city, a town, or any settlement of not [~~less~~] fewer than 10 families;

127 [~~(b)~~ a development;]

128 [~~(c)~~] (b) a public building belonging to the state; or

129 [~~(d)~~] (c) a college or university;

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

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

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

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

137 (12) pipelines for the purpose of conducting any and all liquids connected with the
138 manufacture of beet sugar; and

139 (13) sites for mills, smelters or other works for the reduction of ores and necessary to
140 their successful operation, including the right to take lands for the discharge and natural
141 distribution of smoke, fumes, and dust, produced by the operation of works, provided that the

142 powers granted by this section may not be exercised in any county where the population
143 exceeds 20,000, or within one mile of the limits of any city or incorporated town nor unless the
144 proposed condemner has the right to operate by purchase, option to purchase or easement, at
145 least 75% in value of land acreage owned by persons or corporations situated within a radius of
146 four miles from the mill, smelter or other works for the reduction of ores; nor beyond the limits
147 of the four-mile radius; nor as to lands covered by contracts, easements, or agreements existing
148 between the condemner and the owner of land within the limit and providing for the operation
149 of such mill, smelter, or other works for the reduction of ores; nor until an action shall have
150 been commenced to restrain the operation of such mill, smelter, or other works for the
151 reduction of ores.

152 Section 3. Section **78B-6-505** is amended to read:

153 **78B-6-505. Negotiation and disclosure required before filing an eminent domain**
154 **action.**

155 (1) A political subdivision of the state that seeks to acquire property by eminent
156 domain or that intends to use eminent domain to acquire property if the property cannot be
157 acquired in a voluntary transaction shall:

158 (a) before the governing body, as defined in Subsection 78B-6-504(2)(a), of the
159 political subdivision takes a final vote to approve the filing of an eminent domain action, make
160 a reasonable effort to negotiate with the property owner for the purchase of the property; and

161 (b) except as provided in Subsection (3), as early in the negotiation process described
162 in Subsection (1)(a) as practicable, but no later than 14 days before the day on which a final
163 vote is taken to approve the filing of an eminent domain action:

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

167 (ii) provide the property owner a complete printed copy of the materials provided on
168 the Office of the Property Rights Ombudsman website in accordance with Section 13-43-203
169 regarding the acquisition of property for a public purpose and a property owner's right to just

170 compensation; and

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

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

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

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

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

185 (ii) provide the property owner a complete printed copy of the materials provided on
186 the Office of the Property Rights Ombudsman website in accordance with Section 13-43-203
187 regarding the acquisition of property for a public purpose and a property owner's right to just
188 compensation; and

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

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