

**Representative Mike Winder** proposes the following substitute bill:

**TRAIL IMPROVEMENT AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Mike Winder**

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

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**LONG TITLE**

**General Description:**

This bill addresses circumstances for which eminent domain may used for trails.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ consolidates uses for which the eminent domain right may not be exercised;
- ▶ allows for the exercise of eminent domain for trails meeting certain criteria; 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 2014, Chapter 59

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

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



26 **78B-6-501. Eminent domain -- Uses for which right may be exercised.**

27 [Subject] (1) As used in this section, "century farm" means real property that is:

28 (a) assessed under Title 59, Chapter 2, Part 5, Farmland Assessment Act; and

29 (b) owned or held by the same family for a continuous period of 100 years or more.

30 (2) Except as provided in Subsection (3) and subject to the provisions of this part, the  
31 right of eminent domain may be exercised on behalf of the following public uses:

32 [(1)] (a) [aH] public uses authorized by the federal government;

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

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

37 [(b)] (ii) reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water or  
38 sewage, including to or from a development, for the use of the inhabitants of any county, city,  
39 or town, or for the draining of any county, city, or town;

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

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

43 [(e)] (v) roads, byroads, streets, and alleys for public vehicular use, including for access  
44 to a development[~~-, excluding trails, paths, or other ways for walking, hiking, bicycling,~~  
45 ~~equestrian use, or other recreational uses, or whose primary purpose is as a foot path,~~  
46 ~~equestrian trail, bicycle path, or walkway]; and~~

47 [(f)] (vi) [aH] other public uses for the benefit of any county, city, or town, or [its] the  
48 county's, city's, or town's inhabitants;

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

53 [(5)] (e) reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and  
54 pipes for the supplying of persons, mines, mills, smelters or other works for the reduction of  
55 ores, with water for domestic or other uses, or for irrigation purposes, or for the draining and  
56 reclaiming of lands, or for solar evaporation ponds and other facilities for the recovery of

57 minerals in solution;

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

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

64 ~~[(c)]~~ (iii) mill dams;

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

69 ~~[(e)]~~ (v) solar evaporation ponds and other facilities for the recovery of minerals in  
70 solution; and

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

74 ~~[(7)]~~ (g) byroads leading from a highway to:

75 ~~[(a)]~~ (i) a residence; or

76 ~~[(b)]~~ (ii) a farm;

77 ~~[(8)]~~ (h) telecommunications, electric light and electric power lines, sites for electric  
78 light and power plants, or sites for the transmission of broadcast signals from a station licensed  
79 by the Federal Communications Commission in accordance with 47 C.F.R. Part 73 and that  
80 provides emergency broadcast services;

81 ~~[(9)]~~ (i) sewage service for:

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

83 ~~[(b)]~~ (ii) a public building belonging to the state; or

84 ~~[(c)]~~ (iii) a college or university;

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

88 ~~[(H)] (k)~~ cemeteries and public parks~~[, except for a park whose primary use is: (a) as~~  
89 ~~a trail, path, or other way for walking, hiking, bicycling, or equestrian use; or (b) to connect~~  
90 ~~other trails, paths, or other ways for walking, hiking, bicycling, or equestrian use]; and~~

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

104 (3) The right of eminent domain may not be exercised on behalf of the following uses:

105 (a) except as provided in Subsection (2)(c)(iv), trails, paths, or other ways for walking,  
106 hiking, bicycling, equestrian use, or other recreational uses, or whose primary purpose is as a  
107 foot path, equestrian trail, bicycle path, or walkway; or

108 (b) a public park whose primary purpose is:

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

110 (ii) to connect other trails, paths, or other ways for walking, hiking, bicycling, or  
111 equestrian use.

112 (4) (a) As used in this Subsection (4):

113 (i) "Municipality" means the same as that term is defined in Section [10-1-104](#).

114 (ii) "Regionally significant trail system" means a trail that crosses the boundaries of:

115 (A) two or more counties;

116 (B) two or more municipalities; or

117 (C) a county and a municipality if the boundaries of the county and municipality are  
118 not coextensive or substantially coterminous with the boundaries of each other.

119 (iii) "Trail" means a multi-use path not adjacent to a road used for:  
120 (A) muscle-powered activities, including bicycling, cross-country skiing, walking,  
121 jogging, and horseback riding; and  
122 (B) a use compatible with the uses described in Subsection (4)(a)(iii)(A), including the  
123 use of an electric assisted bicycle or motor assisted scooter, as defined in Section [41-6a-102](#).  
124 (b) Notwithstanding Subsection (3), the right of eminent domain may be exercised for  
125 the purposes of a trail, if:  
126 (i) the part of the trail to be acquired by eminent domain will be:  
127 (A) at least 36 inches in width;  
128 (B) part of a regionally significant trail system; and  
129 (C) approved by resolution of any municipality or county in which the trail will be  
130 located after a public hearing is held by the municipality or county;  
131 (ii) the part of the proposed trail to be acquired by eminent domain cannot be  
132 developed for a residential structure under normal zoning ordinances;  
133 (iii) the part of the proposed trail to be acquired by eminent domain is no closer than  
134 100 feet to a residential structure;  
135 (iv) the part of the proposed trail to be acquired by eminent domain is included in an  
136 adopted trails master plan;  
137 (v) the part of the trail to be acquired by eminent domain does not pass through or  
138 interfere with any of the following as defined in Section [17-41-101](#):  
139 (A) a mining protection area;  
140 (B) an agricultural protection area; or  
141 (C) an industrial protection area;  
142 (vi) the part of the trail to be acquired by eminent domain does not pass through:  
143 (A) a century farm or a productive farmland assessed under Title 59, Chapter 2, Part 5,  
144 Farmland Assessment Act; or  
145 (B) a bird refuge; and  
146 (vii) the part of the trail to be acquired by eminent domain does not interfere with  
147 another use for which eminent domain may be exercised as provided in this section.  
148 (c) Notwithstanding the other provisions of this Subsection (4), a corridor or right of  
149 way used for, or acquired to be used for, a canal, ditch, aqueduct, or other water infrastructure,

150 or a maintenance road for a water infrastructure, may not be condemned for trail use, except for  
151 incidental, perpendicular or near perpendicular trail crossings that are in every material respect  
152 compatible with anticipated, planned, or existing water infrastructure uses.

153 (d) The trail path that is built on property obtained through eminent domain shall allow  
154 roads and utilities to pass across the trail.

155 (e) The part of the trail to be acquired by eminent domain may not divide a property  
156 and:

157 (i) may only be along the boundary edge of the property; and

158 (ii) may not exceed more than 20% of the acreage of the total parcel.

159 (f) A public entity may not restrict access to adjoining private property under, over, or  
160 across the part of the trail to be acquired by eminent domain.