

HB0133S02 compared with HB0133S01

~~deleted text~~ shows text that was in HB0133S01 but was deleted in HB0133S02.

inserted text shows text that was not in HB0133S01 but was inserted into HB0133S02.

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Representative Mike Winder proposes the following substitute bill:

TRAIL IMPROVEMENT AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike Winder

Senate Sponsor: _____

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

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Utah Code Sections Affected:

AMENDS:

78B-6-501, as last amended by Laws of Utah 2014, Chapter 59

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] (1) ~~†(a) †~~ As used in this section, "century farm" means real property that is:

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

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

~~†~~ ~~(b) "Century farm" includes real property designated as a century farm and ranch by the Utah Farm Bureau Federation.~~

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

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

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

~~††(3)†~~ (c) (i) public buildings and grounds for the use of any county, city, town, or board of education;

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

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

~~††(d)†~~ (iv) bicycle paths and sidewalks adjacent to paved roads;

~~††(e)†~~ (v) roads, byroads, streets, and alleys for public vehicular use, including for access to a development[~~, 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)†~~ (vi) [aH] other public uses for the benefit of any county, city, or town, or [its] the county's, city's, or town's inhabitants;

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~~[(4)]~~ (d) 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)]~~ (e) 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 solar evaporation ponds and other facilities for the recovery of minerals in solution;

~~[(6)]~~ ~~(a)~~ (f) (i) 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)]~~ (ii) 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)]~~ (iii) mill dams;

~~[(d)]~~ (iv) 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]~~ that may be required to adequately examine, prepare, maintain, and operate underground natural gas storage facilities;

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

~~[(f)]~~ (vi) ~~[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;

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

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

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

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

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provides emergency broadcast services;

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

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

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

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

~~[(10)]~~ (j) 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)]~~ (k) 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 equestrian use]; and~~

~~[(12)]~~ (l) sites for mills, smelters or other works for the reduction of ores and necessary to ~~[their]~~ the mills', smelters', or other works' 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]~~ the mill, smelter, or other works for the reduction of ores.

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

(a) except as provided in Subsection (2)(c)(iv), 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; or

(b) a public park whose primary purpose is:

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

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

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equestrian use.

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

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

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

(A) two or more counties;

(B) two or more municipalities; or

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

(iii) "Trail" means a multi-use path not adjacent to a road used for:

(A) muscle-powered activities, including bicycling, cross-country skiing, walking, jogging, and horseback riding; and

(B) a use compatible with the uses described in Subsection (4)(a)(iii)(A), including the use of an electric assisted bicycle or motor assisted scooter, as defined in Section 41-6a-102.

(b) Notwithstanding Subsection (3), the right of eminent domain may be exercised for the purposes of a trail, if:

(i) the part of the trail to be acquired by eminent domain will be:

(A) at least 36 inches in width;

(B) part of a regionally significant trail system; and

(C) approved by resolution of any municipality or county in which the trail will be located after a public hearing is held by the municipality or county;

(ii) the ~~proposed trail path does not cross a century farm;~~

~~— (iii) part of~~ the proposed trail ~~path~~ to be acquired by eminent domain cannot be developed for a ~~habitable~~ residential structure under normal zoning ordinances;

~~(iv) iii~~ the part of the proposed trail ~~path~~ to be acquired by eminent domain is no closer than 100 feet ~~of~~ to a ~~habitable~~ residential structure; ~~and~~

~~(v) iv~~ the part of the proposed trail to be acquired by eminent domain is included in an adopted trails master plan;

~~(v) the part of the trail to be acquired by eminent domain does not pass through or interfere with any of the following as defined in Section 17-41-101:~~

~~(A) a mining protection area;~~

~~(B) an agricultural protection area; or~~

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(C) an industrial protection area;

(vi) the part of the trail to be acquired by eminent domain does not pass through:

(A) a century farm or a productive farmland assessed under Title 59, Chapter 2, Part 5, Farmland Assessment Act; or

(B) a bird refuge; and

(vii) the part of the trail to be acquired by eminent domain does not interfere with another use for which eminent domain may be exercised as provided in this section.

(c) Notwithstanding the other provisions of this Subsection (4), a corridor or right of way used for, or acquired to be used for, a canal, ditch, aqueduct, or other water infrastructure, or a maintenance road for a water infrastructure, may not be condemned for trail use, except for incidental, perpendicular or near perpendicular trail crossings that are in every material respect compatible with anticipated, planned, or existing water infrastructure uses.

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

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

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

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

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