

EMINENT DOMAIN REVISIONS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Phil Lyman

Senate Sponsor: _____

LONG TITLE

General Description:

This bill revises provisions related to eminent domain.

Highlighted Provisions:

This bill:

▶ provides that state agencies and political subdivisions may not take private property unless the taking is necessary for the public use;

▶ modifies certain provisions applicable to the Department of Transportation's acquisition of private property;

▶ excludes certain uses for which the eminent domain right may be exercised;

▶ allows a property owner to assert as a defense to an eminent domain action that a taking is not a public use;

▶ modifies provisions related to the sale of certain property acquired by eminent domain; and

▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 28 [72-5-111](#), as last amended by Laws of Utah 2019, Chapter 479
- 29 [72-5-113](#), as renumbered and amended by Laws of Utah 1998, Chapter 270
- 30 [78B-6-501](#), as last amended by Laws of Utah 2014, Chapter 59
- 31 [78B-6-504](#), as renumbered and amended by Laws of Utah 2008, Chapter 3
- 32 [78B-6-505](#), as last amended by Laws of Utah 2014, Chapter 59
- 33 [78B-6-521](#), as last amended by Laws of Utah 2017, Chapter 273

34 ENACTS:

- 35 [63L-3-203](#), Utah Code Annotated 1953
- 36 [63L-4-202](#), Utah Code Annotated 1953



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

39 Section 1. Section [63L-3-203](#) is enacted to read:

40 **[63L-3-203](#). Property taken only when necessary.**

41 In accordance with Section [78B-6-504](#), a state agency may not take private property by
42 eminent domain unless the taking is necessary for the public use.

43 Section 2. Section [63L-4-202](#) is enacted to read:

44 **[63L-4-202](#). Property taken only when necessary.**

45 In accordance with Section [78B-6-504](#), a political subdivision may not take private
46 property by eminent domain unless the taking is necessary for the public use.

47 Section 3. Section [72-5-111](#) is amended to read:

48 **[72-5-111](#). Disposal of real property.**

49 (1) (a) If the department determines that any real property or interest in real property,
50 acquired for a highway purpose, is no longer necessary for the purpose, the department may
51 lease, sell, exchange, or otherwise dispose of the real property or interest in the real property.

52 (b) (i) Real property may be sold at private or public sale.

53 (ii) Except as provided in Subsection (1)(c) related to exchanges and Subsection (1)(d)
54 related to the proceeds of any sale of real property from a maintenance facility, proceeds of any
55 sale shall be deposited with the state treasurer and credited to the Transportation Fund.

56 (c) (i) Except as provided in Subsection (1)(c)(ii), if approved by the commission, real
57 property or an interest in real property may be exchanged by the department for other real
58 property or interest in real property, including improvements, for highway purposes.

59 (ii) The department may exchange an interest in real property for another interest in
60 real property for a project that is part of a statewide transportation improvement program
61 approved by the commission.

62 (d) Proceeds from the sale of real property or an interest in real property from a
63 maintenance facility may be used by the department for the purchase or improvement of
64 another maintenance facility, including real property.

65 (2) (a) In the disposition of real property at any private sale, first consideration shall be
66 given to the original grantor.

67 (b) Notwithstanding the provisions of Section 78B-6-521, if no portion of a parcel of
68 real property acquired by the department is used for transportation purposes, then the original
69 grantor shall be given the opportunity to repurchase the parcel of real property at the
70 department's original purchase price from the grantor.

71 (c) In accordance with Section 72-5-404, this Subsection (2) does not apply to property
72 rights acquired in proposed transportation corridors using funds from the Marda Dillree
73 Corridor Preservation Fund created in Section 72-2-117.

74 (d) (i) The right of first consideration described in Subsection (2)(a) is subject to the
75 same terms and may be assigned by the original grantor in the manner described in Subsection
76 78B-6-521(2).

77 (ii) The original grantor or the assignee shall notify the department of an assignment by
78 certified mail to the current office address of the executive director of the department.

79 (iii) An exchange of real property as provided in Subsection (1)(c) [~~or Section~~
80 ~~72-5-113~~] does not entitle the original grantor to exercise the right of first consideration
81 described in Subsection (2)(a).

82 (iv) The right of first consideration described in Subsection (2)(a) terminates upon an
83 exchange of the acquired real property as provided in Subsection (1)(c) [~~or Section~~ 72-5-113].

84 (3) (a) Any sale, exchange, or disposal of real property or interest in real property made
85 by the department under this section, is exempt from the mineral reservation provisions of Title
86 65A, Chapter 6, Mineral Leases.

87 (b) Any deed made and delivered by the department under this section without specific
88 reservations in the deed is a conveyance of all the state's right, title, and interest in the real
89 property or interest in the real property.

90 Section 4. Section 72-5-113 is amended to read:

91 **72-5-113. Acquisition of entire lot, block, or tract -- Sale or exchange of**
92 **remainder.**

93 If a part of an entire lot, block, tract of land, or interest or improvement in real property
94 is to be acquired by the department and the remainder is to be left in a shape or condition of
95 little value to its owner [~~or to give rise to claims or litigation concerning damages~~], the
96 department may, with the consent of the owner, acquire the whole of the property and may sell
97 the remainder or may exchange it for other property needed for highway purposes.

98 Section 5. Section 78B-6-501 is amended to read:

99 **78B-6-501. Eminent domain -- Uses for which right may be exercised.**

100 [~~Subject~~] (1) Except as provided in Subsection (2) and subject to the provisions of this
101 part, the right of eminent domain may be exercised on behalf of the following public uses:

102 [~~(1) all public uses authorized by the federal government;~~]

103 [~~(2)~~] (a) public buildings and grounds for the use of the state, and all other public uses
104 authorized by the Legislature;

105 [~~(3)(a)~~] (b) (i) public buildings and grounds for the use of any county, city, town, or
106 board of education;

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

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

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

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

117 [~~(f)~~] (vi) all other public uses for the benefit of any county, city, or town, or its
118 inhabitants;

119 [~~(4)~~] (c) wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads,
120 plank and turnpike roads, roads for transportation by traction engines or road locomotives,

121 roads for logging or lumbering purposes, and railroads and street railways for public
122 transportation;

123 ~~[(5)]~~ (d) reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and
124 pipes for the supplying of persons, mines, mills, smelters or other works for the reduction of
125 ores, with water for domestic or other uses, or for irrigation purposes, or for the draining and
126 reclaiming of lands, or for solar evaporation ponds and other facilities for the recovery of
127 minerals in solution;

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

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

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

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

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

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

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

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

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

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

151 ~~[(9)]~~ (h) sewage service for:

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

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

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

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

158 ~~[(11)]~~ (j) cemeteries ~~[and public parks, except for a park whose primary use is:]; and~~

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

160 ~~[(b) to connect other trails, paths, or other ways for walking, hiking, bicycling, or~~
161 ~~equestrian use;]~~

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

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

176 (a) public buildings or grounds for the use of a county, city, town, or board of
177 education if the public building or ground is used for the purpose of recreation or
178 entertainment, including a park, sports facility, or gymnasium, unless the taking is for a park
179 and is consistent with:

180 (i) a state or federal mitigation requirement; and

181 (ii) an existing general plan or master plan adopted by the county, city, town, or board
182 of education; or

183 (b) except as provided in Subsection (1)(b)(iv), trails, paths, or other ways for walking,
 184 hiking, bicycling, equestrian use, or other recreational uses, or whose primary purpose is as a
 185 foot path, equestrian trail, bicycle path, or walkway, unless the taking is consistent with:

186 (i) a state or federal mitigation requirement; and

187 (ii) an existing general plan or master plan adopted by the county, city, town, or board
 188 of education.

189 Section 6. Section **78B-6-504** is amended to read:

190 **78B-6-504. Conditions precedent to taking.**

191 (1) Before property can be taken it must ~~[appear that]~~:

192 (a) be authorized by law for the use to which it is to be applied ~~[is a use authorized by~~
 193 ~~law];~~

194 (b) ~~[the taking is]~~ be necessary for the public use; and

195 ~~[(c) construction and use of all property sought to be condemned will commence~~
 196 ~~within a reasonable time as determined by the court, after the initiation of proceedings under~~
 197 ~~this part, and]~~

198 ~~[(d) if already appropriated to some public use, the public use to which it is to be~~
 199 ~~applied is]~~

200 (c) be a more necessary public use if already appropriated to another public use.

201 (2) (a) As used in this section, "governing body" means:

202 (i) for a county, city, or town, the legislative body of the county, city, or town; and

203 (ii) for any other political subdivision of the state, the person or body with authority to
 204 govern the affairs of the political subdivision.

205 (b) Property may not be taken by a political subdivision of the state unless the
 206 governing body of the political subdivision approves the taking.

207 (c) Before taking a final vote to approve the filing of an eminent domain action, the
 208 governing body of each political subdivision intending to take property shall provide written
 209 notice to each owner of property to be taken of each public meeting of the political
 210 subdivision's governing body at which a vote on the proposed taking is expected to occur and
 211 allow the property owner the opportunity to be heard on the proposed taking.

212 (d) The requirement under Subsection (2)(c) to provide notice to a property owner is
 213 satisfied by the governing body mailing the written notice to the property owner:

214 (i) at the owner's address as shown on the records of the county assessor's office; and
215 (ii) at least 10 business days before the public meeting.

216 (3) (a) In addition to any other available defense, a property owner may assert as a
217 defense to an eminent domain action that the taking is not necessary for a public use as
218 required under this section.

219 (b) A taking is necessary for a public use if the court finds, by clear and convincing
220 evidence, that:

221 (i) initial plans have been approved and funding is available for the public use;

222 (ii) no more property than is reasonably necessary for the public use is to be taken,
223 unless otherwise permitted under Section 57-12-13 or 72-5-113;

224 (iii) construction and use of all property will commence within a reasonable period of
225 time after the political subdivision or state agency takes ownership of the property; and

226 (iv) except for property acquired for state transportation purposes, the public use
227 cannot reasonably be accomplished by using or acquiring other property with the consent of the
228 property owner.

229 Section 7. Section **78B-6-505** is amended to read:

230 **78B-6-505. Negotiation and disclosure required before filing an eminent domain**
231 **action.**

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

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

239 (b) except as provided in Subsection (4), as early in the negotiation process described
240 in Subsection (1)(a) as practicable, but no later than 14 days before the day on which a final
241 vote is taken to approve the filing of an eminent domain action:

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

245 compensation; and

246 (ii) provide the property owner a written statement in substantially the following form:

247 "Although this letter is provided as part of an attempt to negotiate with you for the sale
248 of your property or an interest in your property without using the power of eminent domain,
249 [name of political subdivision] may use that power if it is not able to acquire the property by
250 negotiation. Because of that potential, the person negotiating on behalf of the entity is required
251 to provide the following disclosures to you.

252 1. You are entitled to receive just compensation for your property.

253 2. You are entitled to an opportunity to negotiate with [name of political subdivision]
254 over the amount of just compensation before any legal action will be filed.

255 a. You are entitled to an explanation of how the compensation offered for your
256 property was calculated.

257 b. If an appraiser is asked to value your property, you are entitled to accompany the
258 appraiser during an inspection of the property.

259 3. You are entitled to discuss this case with the attorneys at the Office of the Property
260 Rights Ombudsman. The office may be reached at [provide the current contact information for
261 the Office of the Property Rights Ombudsman].

262 4. The Office of the Property Rights Ombudsman is a neutral state office staffed by
263 attorneys experienced in eminent domain. Their purpose is to assist citizens in understanding
264 and protecting their property rights. You are entitled to ask questions and request an
265 explanation of your legal options.

266 5. If you have a dispute with [name of political subdivision] over the amount of just
267 compensation due to you, you are entitled to request free mediation or arbitration of the dispute
268 from the Office of the Property Rights Ombudsman. As part of mediation or arbitration, you
269 are entitled to request a free independent valuation of the property.

270 6. Oral representations or promises made during the negotiation process are not
271 binding upon the entity seeking to acquire the property by eminent domain."

272 (2) Except as provided in Subsection (4), the entity involved in the acquisition of
273 property may not bring a legal action to acquire the property under this chapter until 30 days
274 after the day on which the disclosure and materials required in Subsection (1)(b)(ii) are
275 provided to the property owner.

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

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

281 (b) except as provided in Subsection (4), as early in the negotiation process described
282 in Subsection (3)(a) as practicable, but no later than 30 days before the day on which the person
283 files an eminent domain action:

284 (i) provide the property owner a complete printed copy of the materials provided on the
285 Office of the Property Rights Ombudsman website in accordance with Section [13-43-203](#)
286 regarding the acquisition of property for a public purpose and a property owner's right to just
287 compensation; and

288 (ii) provide the property owner a written statement in substantially the following form:
289 "Although this letter is provided as part of an attempt to negotiate with you for the sale
290 of your property or an interest in your property without using the power of eminent domain,
291 [name of entity] may use that power if it is not able to acquire the property by negotiation.
292 Because of that potential, the person negotiating on behalf of the entity is required to provide
293 the following disclosures to you.

294 1. You are entitled to receive just compensation for your property.
295 2. You are entitled to an opportunity to negotiate with [name of entity] over the amount
296 of just compensation before any legal action will be filed.

297 a. You are entitled to an explanation of how the compensation offered for your
298 property was calculated.

299 b. If an appraiser is asked to value your property, you are entitled to accompany the
300 appraiser during an inspection of the property.

301 3. You are entitled to discuss this case with the attorneys at the Office of the Property
302 Rights Ombudsman. The office may be reached at [provide the current contact information for
303 the Office of the Property Rights Ombudsman].

304 4. The Office of the Property Rights Ombudsman is a neutral state office staffed by
305 attorneys experienced in eminent domain. Their purpose is to assist citizens in understanding
306 and protecting their property rights. You are entitled to ask questions and request an

307 explanation of your legal options.

308 5. If you have a dispute with [name of entity] over the amount of just compensation
309 due to you, you are entitled to request free mediation or arbitration of the dispute from the
310 Office of the Property Rights Ombudsman. As part of mediation or arbitration, you are entitled
311 to request a free independent valuation of the property.

312 6. Oral representations or promises made during the negotiation process are not
313 binding upon the entity seeking to acquire the property by eminent domain."

314 (4) The court may, upon a showing of exigent circumstances and for good cause,
315 shorten the 14-day period described in Subsection (1)(b) or the 30-day period described in
316 Subsection (2) or (3)(b).

317 Section 8. Section **78B-6-521** is amended to read:

318 **78B-6-521. Sale of property acquired by eminent domain.**

319 (1) As used in this section:

320 (a) "Condemnation" or "threat of condemnation" means:

321 (i) acquisition through an eminent domain proceeding; or

322 (ii) an official body of the state or a subdivision of the state, having the power of
323 eminent domain, has specifically authorized the use of eminent domain to acquire the real
324 property.

325 (b) (i) "Highest offer" means all material terms of the best bona fide offer received by
326 the state or one of the state's subdivisions, including:

327 (A) purchase price;

328 (B) conditions; and

329 (C) terms of performance.

330 (ii) "Highest offer" does not mean the terms and conditions of an agreement to
331 exchange real property or an interest in real property for other real property or an interest in real
332 property.

333 (2) (a) If the state or one of the state's subdivisions, at the state's or the state's
334 subdivision's sole discretion, declares real property that is acquired through condemnation or
335 threat of condemnation to be surplus real property, it may not sell the real property on the open
336 market unless:

337 ~~[(i) the real property has been offered for sale to the original grantor, at the highest~~

338 offer made to the state or one of its subdivisions with first right of refusal being given to the
339 original grantor;]

340 (i) the real property has been offered for sale to the condemnee, with first right of
341 refusal being given to the condemnee, at:

342 (A) the highest offer made to the state or one of the state's subdivisions, if the
343 condemnee did not contest the condemnation in a judicial proceeding; or

344 (B) the acquisition price paid to the condemnee for the surplus real property in an
345 amount proportionate to the total acquisition of real property from the condemnee, if the
346 condemnee contested the condemnation in a judicial proceeding;

347 (ii) the ~~[original grantor]~~ condemnee expressly waived in writing the first right of
348 refusal on the offer or failed to accept the offer within 90 days after notification by registered
349 mail to the condemnee's last-known address; and

350 (iii) neither the state nor the subdivision of the state selling the property is involved in
351 the rezoning of the property or the acquisition of additional property to enhance the value of the
352 real property to be sold.

353 (b) ~~[An original grantor]~~ A condemnee may assign the first right of refusal within 90
354 days after an offer has been made under Subsection (2)(a)(i) if the right has not been waived
355 pursuant to Subsection (2)(a)(ii).

356 (c) The assignment of a right of first refusal pursuant to Subsection (2)(b) does not
357 extend the time for acceptance of an offer as described in Subsection (2)(a)(ii).

358 (3) ~~[(a)]~~ Real property acquired through condemnation or the threat of condemnation is
359 not considered surplus if:

360 (a) the real property is approved for use in an exchange for other real property[:]; and

361 (b) the condemnee did not contest the condemnation in a judicial proceeding.

362 ~~[(b)]~~ (4) (a) An exchange of real property for other real property is not a sale on the
363 open market.

364 ~~[(c)]~~ (b) The first right of refusal described in Subsection (2)(a)(i) shall terminate upon
365 an exchange of the acquired real property.

366 ~~[(4)]~~ (5) This section shall only apply to property acquired after July 1, 1983.