

**Representative Phil Lyman** proposes the following substitute bill:

**EMINENT DOMAIN REVISIONS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Phil Lyman**

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

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**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;
- ▶ provides certain limitations on the taking of property by eminent domain;
- ▶ 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:**



26 AMENDS:

27 [72-5-111](#), as last amended by Laws of Utah 2019, Chapter 479

28 [72-5-113](#), as renumbered and amended by Laws of Utah 1998, Chapter 270

29 [78B-6-501](#), as last amended by Laws of Utah 2014, Chapter 59

30 [78B-6-504](#), as renumbered and amended by Laws of Utah 2008, Chapter 3

31 [78B-6-505](#), as last amended by Laws of Utah 2014, Chapter 59

32 [78B-6-521](#), as last amended by Laws of Utah 2017, Chapter 273

33 ENACTS:

34 [63L-3-203](#), Utah Code Annotated 1953

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



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

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

39 **[63L-3-203](#). Property taken only when necessary.**

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

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

43 **[63L-4-202](#). Property taken only when necessary.**

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

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

47 **[72-5-111](#). Disposal of real property.**

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

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

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

55 (c) (i) Except as provided in Subsection (1)(c)(ii), if approved by the commission, real  
56 property or an interest in real property may be exchanged by the department for other real

57 property or interest in real property, including improvements, for highway purposes.

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

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

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

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

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

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

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

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

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

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

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

88 property or interest in the real property.

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

90 **72-5-113. Acquisition of entire lot, block, or tract -- Sale or exchange of**  
91 **remainder.**

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

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

98 **78B-6-501. Eminent domain -- Uses for which right may be exercised.**

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

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

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

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

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

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

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

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

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

118 [~~(4)~~] (c) wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads,

119 plank and turnpike roads, roads for transportation by traction engines or road locomotives,  
120 roads for logging or lumbering purposes, and railroads and street railways for public  
121 transportation;

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

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

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

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

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

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

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

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

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

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

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

150           ~~[(9)]~~ (h) sewage service for:  
151           ~~[(a)]~~ (i) a city, a town, or any settlement of not fewer than 10 families;  
152           ~~[(b)]~~ (ii) a public building belonging to the state; or  
153           ~~[(c)]~~ (iii) a college or university;  
154           ~~[(10)]~~ (i) canals, reservoirs, dams, ditches, flumes, aqueducts, and pipes for supplying  
155 and storing water for the operation of machinery for the purpose of generating and transmitting  
156 electricity for power, light or heat;  
157           ~~[(11)]~~ (j) cemeteries ~~[and public parks, except for a park whose primary use is:]; and~~  
158           ~~[(a) as a trail, path, or other way for walking, hiking, bicycling, or equestrian use; or]~~  
159           ~~[(b) to connect other trails, paths, or other ways for walking, hiking, bicycling, or~~  
160 equestrian use;]  
161           ~~[(12)]~~ (k) sites for mills, smelters or other works for the reduction of ores and  
162 necessary to their successful operation, including the right to take lands for the discharge and  
163 natural distribution of smoke, fumes, and dust, produced by the operation of works, provided  
164 that the powers granted by this section may not be exercised in any county where the  
165 population exceeds 20,000, or within one mile of the limits of any city or incorporated town  
166 nor unless the proposed condemner has the right to operate by purchase, option to purchase or  
167 easement, at least 75% in value of land acreage owned by persons or corporations situated  
168 within a radius of four miles from the mill, smelter or other works for the reduction of ores; nor  
169 beyond the limits of the four-mile radius; nor as to lands covered by contracts, easements, or  
170 agreements existing between the condemner and the owner of land within the limit and  
171 providing for the operation of such mill, smelter, or other works for the reduction of ores; nor  
172 until an action shall have been commenced to restrain the operation of such mill, smelter, or  
173 other works for the reduction of ores.  
174           (2) The right of eminent domain may not be exercised on behalf of the following uses:  
175           (a) public buildings or grounds for the use of a county, city, town, or board of  
176 education if the public building or ground is used for the purpose of recreation or  
177 entertainment, including a park, sports facility, or gymnasium, unless the taking is consistent  
178 with:  
179           (i) a state or federal mitigation requirement; and  
180           (ii) an existing general plan or master plan adopted by the county, city, town, or board

181 of education; or

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

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

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

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

189 **78B-6-504. Conditions precedent to taking.**

190 (1) ~~[Before property can be taken it must appear that]~~ Property may be taken only if:

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

193 (b) the taking is necessary for the public use;

194 (c) no more property than is reasonably necessary for the public use is being taken,  
195 unless otherwise permitted under Section [57-12-13](#) or [72-5-113](#);

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

199 ~~[(d) if already appropriated to some public use, the public use to which it is to be~~  
200 ~~applied is a more necessary public use.]~~

201 (e) the taking is for a more necessary public use if already appropriated to another  
202 public use; and

203 (f) the public use cannot reasonably be accomplished by using or acquiring other  
204 property with the consent of the property owner, unless the taking is for state transportation  
205 purposes as defined in Section [72-5-102](#).

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

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

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

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

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

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

219 (i) at the owner's address as shown on the records of the county assessor's office; and

220 (ii) at least 10 business days before the public meeting.

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

222 **78B-6-505. Negotiation and disclosure required before filing an eminent domain**  
223 **action.**

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

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

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

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

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

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

243 to provide the following disclosures to you.

244 1. You are entitled to receive just compensation for your property.  
245 2. You are entitled to an opportunity to negotiate with [name of political subdivision]  
246 over the amount of just compensation before any legal action will be filed.

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

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

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

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

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

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

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

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

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

273 (b) except as provided in Subsection (4), as early in the negotiation process described

274 in Subsection (3)(a) as practicable, but no later than 30 days before the day on which the person  
275 files an eminent domain action:

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

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

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

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

287 2. You are entitled to an opportunity to negotiate with [name of entity] over the amount  
288 of just compensation before any legal action will be filed.

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

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

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

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

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

304 6. Oral representations or promises made during the negotiation process are not

305 binding upon the entity seeking to acquire the property by eminent domain."

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

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

310 **78B-6-521. Sale of property acquired by eminent domain.**

311 (1) As used in this section:

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

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

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

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

319 (A) purchase price;

320 (B) conditions; and

321 (C) terms of performance.

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

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

329 ~~[(i) the real property has been offered for sale to the original grantor, at the highest  
330 offer made to the state or one of its subdivisions with first right of refusal being given to the  
331 original grantor;]~~

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

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

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

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

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

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

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

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

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

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

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

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

358 ~~[(4)]~~ (5) This section shall only apply to property acquired after July 1, 1983.