

HB0261S01 compared with HB0261

~~{deleted text}~~ shows text that was in HB0261 but was deleted in HB0261S01.

inserted text shows text that was not in HB0261 but was inserted into HB0261S01.

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Representative Phil Lyman proposes the following substitute bill:

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}~~ provides certain limitations on the taking of property by eminent domain;

HB0261S01 compared with HB0261

- ▶ 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:

72-5-111, as last amended by Laws of Utah 2019, Chapter 479

72-5-113, as renumbered and amended by Laws of Utah 1998, Chapter 270

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

78B-6-504, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-6-505, as last amended by Laws of Utah 2014, Chapter 59

78B-6-521, as last amended by Laws of Utah 2017, Chapter 273

ENACTS:

63L-3-203, Utah Code Annotated 1953

63L-4-202, Utah Code Annotated 1953

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

Section 1. Section **63L-3-203** is enacted to read:

63L-3-203. Property taken only when necessary.

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

Section 2. Section **63L-4-202** is enacted to read:

63L-4-202. Property taken only when necessary.

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

Section 3. Section **72-5-111** is amended to read:

72-5-111. Disposal of real property.

(1) (a) If the department determines that any real property or interest in real property,

HB0261S01 compared with HB0261

acquired for a highway purpose, is no longer necessary for the purpose, the department may lease, sell, exchange, or otherwise dispose of the real property or interest in the real property.

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

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

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

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

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

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

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

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

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

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

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

HB0261S01 compared with HB0261

described in Subsection (2)(a).

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

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

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

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

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

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

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

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

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

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

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

[~~(3)-(a)~~] (b) (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;

HB0261S01 compared with HB0261

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

~~[(4)]~~ (c) 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)]~~ (d) 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)]~~ (e) (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 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,

HB0261S01 compared with HB0261

or any place for the flow, deposit or conduct of tailings or refuse matter;

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

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

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

~~[(8)]~~ (g) 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 provides emergency broadcast services;

~~[(9)]~~ (h) 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)]~~ (i) 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)]~~ (j) cemeteries [~~and public parks, except for a park whose primary use is:~~]; and

~~[(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;]~~

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

HB0261S01 compared with HB0261

other works for the reduction of ores.

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

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

(i) a state or federal mitigation requirement; and

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

(b) except as provided in Subsection (1)(b)(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, unless the taking is consistent with:

(i) a state or federal mitigation requirement; and

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

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

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

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

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

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

~~— (c)~~

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

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

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

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

HB0261S01 compared with HB0261

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HB0261S01 compared with HB0261

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

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

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

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

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

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

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

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

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

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

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

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

3. You are entitled to discuss this case with the attorneys at the Office of the Property

HB0261S01 compared with HB0261

Rights Ombudsman. The office may be reached at [provide the current contact information for the Office of the Property Rights Ombudsman].

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

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

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

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

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

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

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

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

(ii) provide the property owner a written statement in substantially the following form:
"Although this letter is provided as part of an attempt to negotiate with you for the sale of your property or an interest in your property without using the power of eminent domain,

HB0261S01 compared with HB0261

[name of entity] may use that power if it is not able to acquire the property by negotiation. Because of that potential, the person negotiating on behalf of the entity is required to provide the following disclosures to you.

1. You are entitled to receive just compensation for your property.
2. You are entitled to an opportunity to negotiate with [name of entity] over the amount of just compensation before any legal action will be filed.
 - a. You are entitled to an explanation of how the compensation offered for your property was calculated.
 - b. If an appraiser is asked to value your property, you are entitled to accompany the appraiser during an inspection of the property.
3. You are entitled to discuss this case with the attorneys at the Office of the Property Rights Ombudsman. The office may be reached at [provide the current contact information for the Office of the Property Rights Ombudsman].
4. The Office of the Property Rights Ombudsman is a neutral state office staffed by attorneys experienced in eminent domain. Their purpose is to assist citizens in understanding and protecting their property rights. You are entitled to ask questions and request an explanation of your legal options.
5. If you have a dispute with [name of entity] over the amount of just compensation due to you, you are entitled to request free mediation or arbitration of the dispute from the Office of the Property Rights Ombudsman. As part of mediation or arbitration, you are entitled to request a free independent valuation of the property.
6. Oral representations or promises made during the negotiation process are not binding upon the entity seeking to acquire the property by eminent domain."

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

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

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

- (1) As used in this section:
 - (a) "Condemnation" or "threat of condemnation" means:
 - (i) acquisition through an eminent domain proceeding; or

HB0261S01 compared with HB0261

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

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

- (A) purchase price;
- (B) conditions; and
- (C) terms of performance.

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

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

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

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

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

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

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

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

HB0261S01 compared with HB0261

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

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

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

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

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

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

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

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