

**EMINENT DOMAIN AMENDMENTS**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael J. Petersen**

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

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**LONG TITLE**

**General Description:**

This bill revises provisions related to eminent domain.

**Highlighted Provisions:**

This bill:

- ▶ requires the Department of Transportation to obtain a property owner's consent to acquire private property in certain circumstances;
- ▶ modifies the requirements for a political subdivision to exercise eminent domain;
- ▶ allows a property owner to assert as a defense in a court proceeding to challenge an eminent domain action that a taking is not necessary for a public use;
- ▶ requires a political subdivision to show in a court proceeding that a taking is necessary for the public use in certain circumstances; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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

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



28 [78B-6-505](#), as last amended by Laws of Utah 2020, Chapter 290

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

31 Section 1. Section **72-5-113** is amended to read:

32 **72-5-113. Acquisition of entire lot, block, or tract -- Sale or exchange of**  
33 **remainder.**

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

40 Section 2. Section **78B-6-504** is amended to read:

41 **78B-6-504. Conditions precedent to taking.**

42 (1) As used in this section, "governing body" means:

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

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

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

47 (2) Property may be taken only if:

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

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

51 (c) no more property than is reasonably necessary for the public use is being taken,  
52 unless:

53 (i) the taking is for state transportation purposes; or

54 (ii) otherwise permitted under Section [57-12-13](#) or [72-5-113](#);

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

58 (e) the taking is for a more necessary public use if already appropriated to another

59 public use.

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

62 [~~(2)~~ (a) As used in this section, "governing body" means:]

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

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

66 [~~(b)~~] (3) (a) Property may not be taken by a political subdivision of the state unless the  
67 governing body of the political subdivision approves the taking.

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

73 [~~(d)~~] (c) The requirement [~~under Subsection (2)(c)~~] to provide notice to a property  
74 owner under Subsection (3)(b) is satisfied by the governing body mailing the written notice to  
75 the property owner:

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

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

78 (4) (a) In a court proceeding to challenge a political subdivision's eminent domain  
79 action, a property owner may assert, in addition to any other available defenses, that the taking  
80 is not necessary for a public use as required under Subsection (2).

81 (b) In a proceeding described in Subsection (4)(a), the court may not find that the  
82 taking is necessary for a public use unless the political subdivision shows by clear and  
83 convincing evidence that the public use cannot reasonably be accomplished by using or  
84 acquiring other property with the consent of the property owner, if the public use is a public  
85 building or ground used for the purpose of recreation or entertainment, including:

86 (i) a park;

87 (ii) a sports facility;

88 (iii) a gymnasium;

89 (iv) a trail; or

90 (v) a golf course.

91 Section 3. Section **78B-6-505** is amended to read:

92 **78B-6-505. Negotiation and disclosure required before filing an eminent domain**  
93 **action.**

94 (1) As used in this section:

95 (a) (i) "Claimant" means a person who is a record interest holder of real property  
96 sought to be condemned.

97 (ii) "Claimant" does not include:

98 (A) a fee simple owner; or

99 (B) a utility subject to Section [72-6-116](#).

100 (b) "Fee simple owner" means the same as that term is defined in Section [57-12-13](#).

101 (c) "Governing body" means the same as that term is defined in Section [78B-6-504](#).

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

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

108 (b) except as provided in Subsection (5), as early in the negotiation process described  
109 in Subsection (2)(a) as practicable, but no later than 14 days before the day on which a final  
110 vote is taken to approve the filing of an eminent domain action:

111 (i) provide the fee simple owner and each claimant a complete printed copy of the  
112 materials provided on the Office of the Property Rights Ombudsman website in accordance  
113 with Section [13-43-203](#) regarding the acquisition of property for a public purpose and a  
114 property owner's right to just compensation;

115 (ii) provide the fee simple owner a written statement in substantially the following  
116 form:

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

121 to provide the following disclosures to you.

- 122 1. You are entitled to receive just compensation for your property.
- 123 2. You are entitled to an opportunity to negotiate with [name of political subdivision]  
124 over the amount of just compensation before any legal action will be filed.
  - 125 a. You are entitled to an explanation of how the compensation offered for your  
126 property was calculated.
  - 127 b. If an appraiser is asked to value your property, you are entitled to accompany the  
128 appraiser during an inspection of the property.
- 129 3. You are entitled to discuss this case with the attorneys at the Office of the Property  
130 Rights Ombudsman. The office may be reached at [provide the current contact information for  
131 the Office of the Property Rights Ombudsman].
- 132 4. The Office of the Property Rights Ombudsman is a neutral state office staffed by  
133 attorneys experienced in eminent domain. Their purpose is to assist citizens in understanding  
134 and protecting their property rights. You are entitled to ask questions and request an  
135 explanation of your legal options.
- 136 5. If you have a dispute with [name of political subdivision] over the amount of just  
137 compensation due to you, you are entitled to request free mediation or arbitration of the dispute  
138 from the Office of the Property Rights Ombudsman. As part of mediation or arbitration, you  
139 are entitled to request a free independent valuation of the property.
- 140 6. Oral representations or promises made during the negotiation process are not  
141 binding upon the entity seeking to acquire the property by eminent domain."; and  
142 (iii) provide each claimant a written statement in substantially the following form:
  - 143 "1. Your interest in property may be impacted by a public improvement project and  
144 you may be entitled to receive just compensation.
  - 145 2. You are entitled to discuss this case with the attorneys at the Office of the Property  
146 Rights Ombudsman. The office may be reached at [provide the current contact information for  
147 the Office of the Property Rights Ombudsman].
  - 148 3. The Office of the Property Rights Ombudsman is a neutral state office staffed by  
149 attorneys experienced in eminent domain. Their purpose is to assist citizens in understanding  
150 and protecting their property rights. You are entitled to ask questions and request an  
151 explanation of your legal options.

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

156 5. Oral representations or promises made during any negotiation are not binding upon  
157 the entity seeking to acquire the property by eminent domain."

158 (3) Except as provided in Subsection (5), the entity involved in the acquisition of  
159 property may not bring a legal action to acquire the property under this chapter until 30 days  
160 after the day on which the disclosure and materials required in Subsections (2)(b)(ii) and (iii)  
161 are provided to the fee simple owner and each claimant.

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

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

167 (b) except as provided in Subsection (5), as early in the negotiation process described  
168 in Subsection (4)(a) as practicable, but no later than 30 days before the day on which the person  
169 files an eminent domain action:

170 (i) provide the fee simple owner and each claimant a complete printed copy of the  
171 materials provided on the Office of the Property Rights Ombudsman website in accordance  
172 with Section [13-43-203](#) regarding the acquisition of property for a public purpose and a  
173 property owner's right to just compensation;

174 (ii) provide the fee simple owner a written statement in substantially the following  
175 form:

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

- 181 1. You are entitled to receive just compensation for your property.
- 182 2. You are entitled to an opportunity to negotiate with [name of entity] over the amount

183 of just compensation before any legal action will be filed.

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

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

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

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

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

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

201 (iii) provide each claimant a written statement in substantially the following form:

202 "1. Your interest in property may be impacted by a public improvement project and  
203 you may be entitled to receive just compensation.

204 2. You are entitled to discuss this case with the attorneys at the Office of the Property  
205 Rights Ombudsman. The office may be reached at [provide the current contact information for  
206 the Office of the Property Rights Ombudsman].

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

211 4. If you have a dispute with [name of entity] over the amount of just compensation  
212 due to you, you are entitled to request free mediation or arbitration of the dispute from the  
213 Office of the Property Rights Ombudsman. As part of mediation or arbitration, you are entitled

214 to request a free independent valuation of the property.

215           5. Oral representations or promises made during any negotiation are not binding upon  
216 the entity seeking to acquire the property by eminent domain."

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