

EMINENT DOMAIN FOR TRAILS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Doug Owens

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses eminent domain.

Highlighted Provisions:

This bill:

- ▶ establishes when eminent domain may be used for certain trails; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-6-501, as last amended by Laws of Utah 2020, Chapter 87

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

Section 1. Section **78B-6-501** is amended to read:

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

- (1) As used in this section, "century farm" means real property that is:
- (a) assessed under Title 59, Chapter 2, Part 5, Farmland Assessment Act; and
 - (b) owned or held by the same family for a continuous period of 100 years or more.



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

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

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

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

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

38 (iii) the raising of the banks of streams, removing obstructions from streams, and
39 widening, deepening, or straightening [~~their~~] streams' channels;

40 (iv) bicycle paths and sidewalks adjacent to paved roads;

41 (v) roads, byroads, streets, and alleys for public vehicular use, including for access to a
42 development; and

43 (vi) [~~all~~] other public uses for the benefit of any county, city, or town, or [~~its~~] the
44 county's, city's, or town's inhabitants;

45 (d) wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank
46 and turnpike roads, roads for transportation by traction engines or road locomotives, roads for
47 logging or lumbering purposes, and railroads and street railways for public transportation;

48 (e) reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and pipes
49 for the supplying of persons, mines, mills, smelters or other works for the reduction of ores,
50 with water for domestic or other uses, or for irrigation purposes, or for the draining and
51 reclaiming of lands, or for solar evaporation ponds and other facilities for the recovery of
52 minerals in solution;

53 (f) (i) roads, railroads, tramways, tunnels, ditches, flumes, pipes, and dumping places
54 to access or facilitate the milling, smelting, or other reduction of ores, or the working of mines,
55 quarries, coal mines, or mineral deposits including oil, gas, and minerals in solution;

56 (ii) outlets, natural or otherwise, for the deposit or conduct of tailings, refuse or water
57 from mills, smelters or other works for the reduction of ores, or from mines, quarries, coal
58 mines or mineral deposits including minerals in solution;

- 59 (iii) mill dams;
- 60 (iv) gas, oil or coal pipelines, tanks or reservoirs, including any subsurface stratum or
61 formation in any land for the underground storage of natural gas, and in connection with that,
62 any other interests in property [~~which~~] that may be required to adequately examine, prepare,
63 maintain, and operate underground natural gas storage facilities;
- 64 (v) solar evaporation ponds and other facilities for the recovery of minerals in solution;
65 and
- 66 (vi) [~~any~~] occupancy in common by the owners or possessors of different mines,
67 quarries, coal mines, mineral deposits, mills, smelters, or other places for the reduction of ores,
68 or any place for the flow, deposit or conduct of tailings or refuse matter;
- 69 (g) byroads leading from a highway to:
- 70 (i) a residence; or
- 71 (ii) a farm;
- 72 (h) telecommunications, electric light and electric power lines, sites for electric light
73 and power plants, or sites for the transmission of broadcast signals from a station licensed by
74 the Federal Communications Commission in accordance with 47 C.F.R. Part 73 and that
75 provides emergency broadcast services;
- 76 (i) sewage service for:
- 77 (i) a city, a town, or any settlement of not fewer than 10 families;
- 78 (ii) a public building belonging to the state; or
- 79 (iii) a college or university;
- 80 (j) canals, reservoirs, dams, ditches, flumes, aqueducts, and pipes for supplying and
81 storing water for the operation of machinery for the purpose of generating and transmitting
82 electricity for power, light or heat;
- 83 (k) cemeteries and public parks; and
- 84 (l) sites for mills, smelters, or other works for the reduction of ores and necessary to
85 [~~their~~] the mills', smelters', or other works' successful operation, including the right to take
86 lands for the discharge and natural distribution of smoke, fumes, and dust, produced by the
87 operation of works, [~~provided~~] except that the powers granted by this section may not be
88 exercised:
- 89 (i) in [~~any~~] a county where the population exceeds 20,000[~~, or~~];

- 90 (ii) within one mile of the limits of [~~any~~] a city or incorporated town [~~nor~~];
- 91 (iii) unless the proposed condemner has the right to operate by purchase, option to
- 92 purchase or easement, at least 75% in value of land acreage owned by persons or corporations
- 93 situated within a radius of four miles from the mill, smelter, or other works for the reduction of
- 94 ores; [~~nor~~]
- 95 (iv) beyond the limits of the four-mile radius; [~~nor~~]
- 96 (v) as to lands covered by contracts, easements, or agreements existing between the
- 97 condemner and the owner of land within the limit and providing for the operation of [~~such~~] the
- 98 mill, smelter, or other works for the reduction of ores; [~~nor~~] or
- 99 (vi) until an action shall have been commenced to restrain the operation of [~~such~~] the
- 100 mill, smelter, or other works for the reduction of ores.
- 101 (3) The right of eminent domain may not be exercised on behalf of the following uses:
- 102 (a) except as provided in Subsection (2)(c)(iv), trails, paths, or other ways for walking,
- 103 hiking, bicycling, equestrian use, or other recreational uses, or whose primary purpose is as a
- 104 foot path, equestrian trail, bicycle path, or walkway;
- 105 (b) (i) a public park whose primary purpose is:
- 106 (A) as a trail, path, or other way for walking, hiking, bicycling, or equestrian use; or
- 107 (B) to connect other trails, paths, or other ways for walking, hiking, bicycling, or
- 108 equestrian use; or
- 109 (ii) a public park established on real property that is:
- 110 (A) a century farm; and
- 111 (B) located in a county of the first class.
- 112 (4) (a) As used in this Subsection (4):
- 113 (i) "Municipality" means the same as that term is defined in Section 10-1-104.
- 114 (ii) "Trail" means a multi-use path not adjacent to a road used for:
- 115 (A) muscle-powered activities, including bicycling, cross-country skiing, walking,
- 116 jogging, and horseback riding; and
- 117 (B) a use compatible with the uses described in Subsection (4)(a)(ii)(A), including the
- 118 use of an electric assisted bicycle or motor assisted scooter, as defined in Section 41-6a-102.
- 119 (b) Notwithstanding Subsection (3), a county of the first class or a municipality located
- 120 in a county of the first class may exercise eminent domain for the purposes of a trail, if the part

121 of the trail to be acquired by eminent domain:

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

124 (ii) cannot be developed for a residential structure under normal zoning ordinances;

125 and

126 (iii) is included in an adopted trails master plan.