

Representative Michael J. Petersen proposes the following substitute bill:

EMINENT DOMAIN AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael J. Petersen

Senate Sponsor: John D. Johnson

LONG TITLE

General Description:

This bill modifies the public uses for which the right of eminent domain may be exercised.

Highlighted Provisions:

This bill:

- ▶ limits the exercise of eminent domain related to public parks; 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 2021, Chapter 41

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 --



26 **Limitations on eminent domain.**

- 27 (1) As used in this section, "century farm" means real property that is:
- 28 (a) assessed under Title 59, Chapter 2, Part 5, Farmland Assessment Act; and
- 29 (b) owned or held by the same family for a continuous period of 100 years or more.
- 30 (2) Except as provided in Subsections (3) and (4) and subject to the provisions of this
- 31 part, the right of eminent domain may be exercised on behalf of the following public uses:
- 32 (a) all public uses authorized by the federal government;
- 33 (b) public buildings and grounds for the use of the state, and all other public uses
- 34 authorized by the Legislature;
- 35 (c) (i) public buildings and grounds for the use of any county, city, town, or board of
- 36 education;
- 37 (ii) reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water or
- 38 sewage, including to or from a development, for the use of the inhabitants of any county, city,
- 39 or town, or for the draining of any county, city, or town;
- 40 (iii) the raising of the banks of streams, removing obstructions from streams, and
- 41 widening, deepening, or straightening their channels;
- 42 (iv) bicycle paths and sidewalks adjacent to paved roads;
- 43 (v) roads, byroads, streets, and alleys for public vehicular use, including for access to a
- 44 development; and
- 45 (vi) all other public uses for the benefit of any county, city, or town, or its inhabitants;
- 46 (d) wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank
- 47 and turnpike roads, roads for transportation by traction engines or road locomotives, roads for
- 48 logging or lumbering purposes, and railroads and street railways for public transportation;
- 49 (e) reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and pipes
- 50 for the supplying of persons, mines, mills, smelters or other works for the reduction of ores,
- 51 with water for domestic or other uses, or for irrigation purposes, or for the draining and
- 52 reclaiming of lands, or for solar evaporation ponds and other facilities for the recovery of
- 53 minerals in solution;
- 54 (f) (i) roads, railroads, tramways, tunnels, ditches, flumes, pipes, and dumping places
- 55 to access or facilitate the milling, smelting, or other reduction of ores, or the working of mines,
- 56 quarries, coal mines, or mineral deposits including oil, gas, and minerals in solution;

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

60 (iii) mill dams;

61 (iv) gas, oil or coal pipelines, tanks or reservoirs, including any subsurface stratum or
62 formation in any land for the underground storage of natural gas, and in connection with that,
63 any other interests in property which may be required to adequately examine, prepare,
64 maintain, and operate underground natural gas storage facilities;

65 (v) solar evaporation ponds and other facilities for the recovery of minerals in solution;
66 and

67 (vi) any occupancy in common by the owners or possessors of different mines,
68 quarries, coal mines, mineral deposits, mills, smelters, or other places for the reduction of ores,
69 or any place for the flow, deposit or conduct of tailings or refuse matter;

70 (g) byroads leading from a highway to:

71 (i) a residence; or

72 (ii) a farm;

73 (h) telecommunications, electric light and electric power lines, sites for electric light
74 and power plants, or sites for the transmission of broadcast signals from a station licensed by
75 the Federal Communications Commission in accordance with 47 C.F.R. Part 73 and that
76 provides emergency broadcast services;

77 (i) sewage service for:

78 (i) a city, a town, or any settlement of not fewer than 10 families;

79 (ii) a public building belonging to the state; or

80 (iii) a college or university;

81 (j) canals, reservoirs, dams, ditches, flumes, aqueducts, and pipes for supplying and
82 storing water for the operation of machinery for the purpose of generating and transmitting
83 electricity for power, light or heat;

84 (k) cemeteries [~~and public parks~~]; [~~and~~]

85 (l) sites for mills, smelters or other works for the reduction of ores and necessary to
86 their successful operation, including the right to take lands for the discharge and natural
87 distribution of smoke, fumes, and dust, produced by the operation of works, provided that the

88 powers granted by this section may not be exercised in any county where the population
 89 exceeds 20,000, or within one mile of the limits of any city or incorporated town nor unless the
 90 proposed condemner has the right to operate by purchase, option to purchase or easement, at
 91 least 75% in value of land acreage owned by persons or corporations situated within a radius of
 92 four miles from the mill, smelter or other works for the reduction of ores; nor beyond the limits
 93 of the four-mile radius; nor as to lands covered by contracts, easements, or agreements existing
 94 between the condemner and the owner of land within the limit and providing for the operation
 95 of such mill, smelter, or other works for the reduction of ores; nor until an action shall have
 96 been commenced to restrain the operation of such mill, smelter, or other works for the
 97 reduction of ores[.]; and

98 (m) public parks as part of economic development projects where other contiguous real
 99 property for commercial or industrial uses is being acquired under eminent domain at the same
 100 time.

101 (3) The right of eminent domain may not be exercised on behalf of any of the
 102 following uses:

103 (a) except as provided in Subsection (2)(c)(iv), [~~trails, paths, or other ways~~] for a trail,
 104 path, or other way for walking, hiking, bicycling, equestrian use, or other recreational [~~uses, or~~
 105 ~~whose~~] use, including if the primary purpose is [as] for a foot path, equestrian trail, bicycle
 106 path, or walkway;

107 (b) a public park whose primary purpose is:

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

110 [~~(B)~~] (ii) to connect other trails, paths, or other ways for walking, hiking, bicycling, or
 111 equestrian use; [~~or~~]

112 [~~(i)~~] (c) a public park established on real property that is:

113 [~~(A)~~] (i) a century farm; and

114 [~~(B)~~] (ii) located in a county of the first class[.]; or

115 (d) a public park that does not meet the requirements of Subsection (2)(m).

116 (4) (a) The right of eminent domain may not be exercised within a migratory bird
 117 production area created on or before December 31, 2020, under Title 23, Chapter 28, Migratory
 118 Bird Production Area, except as follows:

119 (i) subject to Subsection (4)(b), an electric utility may condemn land within a migratory
120 bird production area located in a county of the first class only for the purpose of installing
121 buried power lines;

122 (ii) an electric utility may condemn land within a migratory bird production area in a
123 county other than a county of the first class to install:

124 (A) buried power lines; or

125 (B) a new overhead transmission line that is parallel to and abutting an existing
126 overhead transmission line or collocated within an existing overhead transmission line right of
127 way; or

128 (iii) the Department of Transportation may exercise eminent domain for the purpose of
129 the construction of the West Davis Highway.

130 (b) Before exercising the right of eminent domain under Subsection (4)(a)(i), the
131 electric utility shall demonstrate that:

132 (i) the proposed condemnation would not have an unreasonable adverse effect on the
133 preservation, use, and enhancement of the migratory bird production area; and

134 (ii) there is no reasonable alternative to constructing the power line within the
135 boundaries of a migratory bird production area.