

HB0085S01 compared with HB0085

~~text~~ shows text that was in HB0085 but was deleted in HB0085S01.

text shows text that was not in HB0085 but was inserted into HB0085S01.

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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:

- ▶ ~~removes~~ limits the ~~creation of a public park as a public use for which the right~~ exercise of eminent domain ~~may be exercised~~ related to public parks; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

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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 --

Limitations on eminent domain.

- (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.
- (2) Except as provided in Subsections (3) and (4) and subject to the provisions of this part, the right of eminent domain may be exercised on behalf of the following public uses:
- (a) all public uses authorized by the federal government;
 - (b) public buildings and grounds for the use of the state, and all other public uses authorized by the Legislature;
 - (c) (i) public buildings and grounds for the use of any county, city, town, or board of education;
 - (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;
 - (iii) the raising of the banks of streams, removing obstructions from streams, and widening, deepening, or straightening their channels;
 - (iv) bicycle paths and sidewalks adjacent to paved roads;
 - (v) roads, byroads, streets, and alleys for public vehicular use, including for access to a development; and
 - (vi) all other public uses for the benefit of any county, city, or town, or its inhabitants;
 - (d) 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;
 - (e) reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and pipes

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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;

(f) (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;

(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;

(iii) mill dams;

(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;

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

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

(g) byroads leading from a highway to:

(i) a residence; or

(ii) a farm;

(h) 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;

(i) sewage service for:

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

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

(iii) a college or university;

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(j) 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;

(k) ~~{}~~cemeteries ~~[and public parks]~~ ~~{a cemetery}~~; ~~[and]~~

(l) 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 other works for the reduction of ores~~[; and]~~

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

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

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

~~{~~ (b) a public park, including:

~~}~~ ~~{(b-f)}~~ (i) a public park whose primary purpose is:

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

or

~~[(B)]~~ (ii) to connect other trails, paths, or other ways for walking, hiking, bicycling, or

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equestrian use; ~~[or]~~

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

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

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

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

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

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

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

(A) buried power lines; or

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

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

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

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

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