

EMINENT DOMAIN MODIFICATIONS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Casey Snider

Senate Sponsor: Michael K. McKell

LONG TITLE

General Description:

This bill modifies provisions related to eminent domain.

Highlighted Provisions:

This bill:

- ▶ modifies provisions related to the authority of a county to exercise eminent domain on a highway, street, or road under certain circumstances; 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 --

Limitations on eminent domain.

(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)~~] (3), (4), and (5) and subject to the
31 provisions of this part, the right of eminent domain may be exercised on behalf of the following
32 public uses:
- 33 (a) all public uses authorized by the federal government;
34 (b) public buildings and grounds for the use of the state, and all other public uses
35 authorized by the Legislature;
36 (c) (i) public buildings and grounds for the use of any county, city, town, or board of
37 education;
38 (ii) reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water or
39 sewage, including to or from a development, for the use of the inhabitants of any county, city,
40 or town, or for the draining of any county, city, or town;
41 (iii) the raising of the banks of streams, removing obstructions from streams, and
42 widening, deepening, or straightening their channels;
43 (iv) bicycle paths and sidewalks adjacent to paved roads;
44 (v) roads, byroads, streets, and alleys for public vehicular use, including for access to a
45 development; and
46 (vi) all other public uses for the benefit of any county, city, or town, or its inhabitants;
47 (d) wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank
48 and turnpike roads, roads for transportation by traction engines or road locomotives, roads for
49 logging or lumbering purposes, and railroads and street railways for public transportation;
50 (e) reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and pipes
51 for the supplying of persons, mines, mills, smelters or other works for the reduction of ores,
52 with water for domestic or other uses, or for irrigation purposes, or for the draining and
53 reclaiming of lands, or for solar evaporation ponds and other facilities for the recovery of
54 minerals in solution;
55 (f) (i) roads, railroads, tramways, tunnels, ditches, flumes, pipes, and dumping places
56 to access or facilitate the milling, smelting, or other reduction of ores, or the working of mines,
57 quarries, coal mines, or mineral deposits including oil, gas, and minerals in solution;
58 (ii) outlets, natural or otherwise, for the deposit or conduct of tailings, refuse or water

59 from mills, smelters or other works for the reduction of ores, or from mines, quarries, coal
60 mines or mineral deposits including minerals in solution;

61 (iii) mill dams;

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

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

67 and

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

71 (g) byroads leading from a highway to:

72 (i) a residence; or

73 (ii) a farm;

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

78 (i) sewage service for:

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

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

81 (iii) a college or university;

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

85 (k) cemeteries and public parks; and

86 (l) sites for mills, smelters or other works for the reduction of ores and necessary to
87 their successful operation, including the right to take lands for the discharge and natural
88 distribution of smoke, fumes, and dust, produced by the operation of works, provided that the
89 powers granted by this section may not be exercised in any county where the population

90 exceeds 20,000, or within one mile of the limits of any city or incorporated town nor unless the
91 proposed condemner has the right to operate by purchase, option to purchase or easement, at
92 least 75% in value of land acreage owned by persons or corporations situated within a radius of
93 four miles from the mill, smelter or other works for the reduction of ores; nor beyond the limits
94 of the four-mile radius; nor as to lands covered by contracts, easements, or agreements existing
95 between the condemner and the owner of land within the limit and providing for the operation
96 of such mill, smelter, or other works for the reduction of ores; nor until an action shall have
97 been commenced to restrain the operation of such mill, smelter, or other works for the
98 reduction of ores.

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

100 (a) except as provided in Subsection (2)(c)(iv), trails, paths, or other ways for walking,
101 hiking, bicycling, equestrian use, or other recreational uses, or whose primary purpose is as a
102 foot path, equestrian trail, bicycle path, or walkway;

103 (b) (i) a public park whose primary purpose is:

104 (A) as a trail, path, or other way for walking, hiking, bicycling, or equestrian use; or

105 (B) to connect other trails, paths, or other ways for walking, hiking, bicycling, or
106 equestrian use; or

107 (ii) a public park established on real property that is:

108 (A) a century farm; and

109 (B) located in a county of the first class.

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

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

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

118 (A) buried power lines; or

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

121 way; or

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

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

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

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

130 (5) A county may not exercise eminent domain for the public use of a highway, street,
131 or road on private property if the county has previously commenced any action in a court of
132 competent jurisdiction to claim an R.S. 2477 right-of-way, as that term is defined in Section
133 72-5-301, on the highway, street, or road, unless and until the county has prevailed and the
134 court has granted the county an R.S. 2477 right-of-way for the highway, street, or road.