

EMINENT DOMAIN MODIFICATIONS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Bridger Bolinder

Senate Sponsor: Scott D. Sandall

LONG TITLE

General Description:

This bill addresses eminent domain.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ addresses when eminent domain related to mining is prohibited; and
- ▶ makes technical and conforming amendments.

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 2023, Chapter 34

78B-6-502, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-6-503, as renumbered and amended by Laws of Utah 2008, Chapter 3

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 --



28 **Limitations on eminent domain.**29 (1) As used in this section~~[, "century]~~:

30 (a) "Century farm" means real property that is:

31 ~~[(a)]~~ (i) assessed under Title 59, Chapter 2, Part 5, Farmland Assessment Act; and32 ~~[(b)]~~ (ii) owned or held by the same family for a continuous period of 100 years or
33 more.

34 (b) (i) "Mining use" means:

35 (A) the full range of permitted or active activities, from prospecting and exploration to
36 reclamation and closure, associated with the exploitation of a mineral deposit; and37 (B) the use of the surface, subsurface, groundwater, and surface water of an area in
38 connection with the activities described in Subsection (1)(b)(i)(A) that have been, are being, or
39 will be conducted.

40 (ii) "Mining use" includes, whether conducted on-site or off-site:

41 (A) sampling, staking, surveying, exploration, or development activity;42 (B) drilling, blasting, excavating, or tunneling;43 (C) the removal, transport, treatment, deposition, and reclamation of overburden,
44 development rock, tailings, and other waste material;45 (D) the recovery of sand and gravel;46 (E) removal, transportation, extraction, beneficiation, or processing of ore;47 (F) use of solar evaporation ponds and other facilities for the recovery of minerals in
48 solution;49 (G) smelting, refining, autoclaving, or other primary or secondary processing
50 operation;51 (H) the recovery of any mineral left in residue from a previous extraction or processing
52 operation;53 (I) a mining activity that is identified in a work plan or permitting document;54 (J) the use, operation, maintenance, repair, replacement, construction, or alteration of a
55 building, structure, facility, equipment, machine, tool, or other material or property that results
56 from or is used in a surface or subsurface mining operation or activity;57 (K) an accessory, incidental, or ancillary activity or use, both active and passive,
58 including a utility, private way or road, pipeline, land excavation, working, embankment, pond,

59 gravel excavation, mining waste, conveyor, power line, trackage, storage, reserve, passive use
60 area, buffer zone, and power production facility;

61 (L) the construction of a storage, factory, processing, or maintenance facility; and

62 (M) an activity described in Subsection 40-8-4(17)(a).

63 (2) Except as provided in Subsections (3) [~~and~~], (4), and (5) and subject to the
64 provisions of this part, the right of eminent domain may be exercised on behalf of the following
65 public uses:

66 (a) all public uses authorized by the federal government;

67 (b) public buildings and grounds for the use of the state, and all other public uses
68 authorized by the Legislature;

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

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

74 (iii) the raising of the banks of streams, removing obstructions from streams, and
75 widening, deepening, or straightening their channels;

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

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

79 (vi) all other public uses for the benefit of any county, city, or town, or its inhabitants;

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

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

88 (f) (i) roads, railroads, tramways, tunnels, ditches, flumes, pipes, and dumping places
89 to access or facilitate the milling, smelting, or other reduction of ores, or the working of mines,

90 quarries, coal mines, or mineral deposits including oil, gas, and minerals in solution;
91 (ii) outlets, natural or otherwise, for the deposit or conduct of tailings, refuse or water
92 from mills, smelters or other works for the reduction of ores, or from mines, quarries, coal
93 mines or mineral deposits including minerals in solution;
94 (iii) mill dams;
95 (iv) gas, oil or coal pipelines, tanks or reservoirs, including any subsurface stratum or
96 formation in any land for the underground storage of natural gas, and in connection with that,
97 any other interests in property which may be required to adequately examine, prepare,
98 maintain, and operate underground natural gas storage facilities;
99 (v) solar evaporation ponds and other facilities for the recovery of minerals in solution;
100 and
101 (vi) any occupancy in common by the owners or possessors of different mines,
102 quarries, coal mines, mineral deposits, mills, smelters, or other places for the reduction of ores,
103 or any place for the flow, deposit or conduct of tailings or refuse matter;
104 (g) byroads leading from a highway to:
105 (i) a residence; or
106 (ii) a farm;
107 (h) telecommunications, electric light and electric power lines, sites for electric light
108 and power plants, or sites for the transmission of broadcast signals from a station licensed by
109 the Federal Communications Commission in accordance with 47 C.F.R. Part 73 and that
110 provides emergency broadcast services;
111 (i) sewage service for:
112 (i) a city, a town, or any settlement of not fewer than 10 families;
113 (ii) a public building belonging to the state; or
114 (iii) a college or university;
115 (j) canals, reservoirs, dams, ditches, flumes, aqueducts, and pipes for supplying and
116 storing water for the operation of machinery for the purpose of generating and transmitting
117 electricity for power, light or heat;
118 (k) cemeteries and public parks; and
119 (l) sites for mills, smelters or other works for the reduction of ores and necessary to
120 their successful operation, including the right to take lands for the discharge and natural

121 distribution of smoke, fumes, and dust, produced by the operation of works, provided that the
122 powers granted by this section may not be exercised in any county where the population
123 exceeds 20,000, or within one mile of the limits of any city or incorporated town nor unless the
124 proposed condemner has the right to operate by purchase, option to purchase or easement, at
125 least 75% in value of land acreage owned by persons or corporations situated within a radius of
126 four miles from the mill, smelter or other works for the reduction of ores; nor beyond the limits
127 of the four-mile radius; nor as to lands covered by contracts, easements, or agreements existing
128 between the condemner and the owner of land within the limit and providing for the operation
129 of such mill, smelter, or other works for the reduction of ores; nor until an action shall have
130 been commenced to restrain the operation of such mill, smelter, or other works for the
131 reduction of ores.

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

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

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

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

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

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

141 (A) a century farm; and

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

143 (4) (a) The right of eminent domain may not be exercised within a migratory bird
144 production area created on or before December 31, 2020, under Title 23A, Chapter 13,
145 Migratory Bird Production Area, except as follows:

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

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

151 (A) buried power lines; or

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

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

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

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

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

163 (5) If the intended public purpose is for a mining use, a person may not exercise the
164 power of eminent domain over property, or an interest in property, that is already used for a
165 mining use within the boundary of:

166 (a) a permit area, as defined in Section 40-8-4;

167 (b) an area for which a permit has been issued by the Division of Water Quality, as part
168 of the underground injection control program, under rules made by the Water Quality Board in
169 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

170 (c) private property; or

171 (d) an area under a state or federal lease.

172 Section 2. Section 78B-6-502 is amended to read:

173 **78B-6-502. Estates and rights that may be taken.**

174 [~~The~~] Except as provided in Subsection 78B-6-501(3), (4), or (5), the following estates
175 and rights in lands are subject to being taken for public use:

176 (1) a fee simple, when taken for:

177 (a) public buildings or grounds;

178 (b) permanent buildings;

179 (c) reservoirs and dams, and permanent flooding occasioned by them;

180 (d) any permanent flood control structure affixed to the land;

181 (e) an outlet for a flow, a place for the deposit of debris or tailings of a mine, mill,
182 smelter, or other place for the reduction of ores; and

183 (f) solar evaporation ponds and other facilities for the recovery of minerals in solution,
184 except when the surface ground is underlaid with minerals, coal, or other deposits sufficiently
185 valuable to justify extraction, only a perpetual easement may be taken over the surface ground
186 over the deposits;

187 (2) an easement, when taken for any other use; and

188 (3) the right of entry upon and occupation of lands, with the right to take from those
189 lands earth, gravel, stones, trees, and timber as necessary for a public use.

190 Section 3. Section **78B-6-503** is amended to read:

191 **78B-6-503. Private property which may be taken.**

192 [~~Private property which~~] Except as provided in Subsection 78B-6-501(3), (4), or (5),
193 private property that may be taken under this part includes:

194 (1) all real property belonging to any person;

195 (2) lands belonging to the state, or to any county, city or incorporated town, not
196 appropriated to some public use;

197 (3) property appropriated to public use[~~;~~ ~~provided~~], except that the property may not be
198 taken unless for a more necessary public use than that to which [~~it~~] the property has already
199 been appropriated;

200 (4) franchises for toll roads, toll bridges, ferries, and all other franchises[~~;~~ ~~provided~~],
201 except that the franchises may not be taken unless for free highways, railroads, or other more
202 necessary public use;

203 (5) all rights of way for any and all purposes mentioned in Section 78B-6-501 [~~hereof~~],
204 and any and all structures and improvements on the property, and the lands held or used in
205 connection with the property, [~~shall be~~] except that:

206 (a) the property is subject to be connected with, crossed, or intersected by any other
207 right of way or improvement or structure; [~~they shall also be~~]

208 (b) the property is subject to a limited use in common with the owners, when
209 necessary; [~~but~~] and

210 (c) uses of crossings, intersections, and connections shall be made in the manner most
211 compatible with the greatest public benefit and the least private injury; and

212 (6) all classes of private property not enumerated if the taking is authorized by law.

213 Section 4. **Effective date.**

214

This bill takes effect on May 1, 2024.