

EMINENT DOMAIN AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Lee B. Perry**

Senate Sponsor: Scott K. Jenkins

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**LONG TITLE**

**General Description:**

This bill enacts language related to an entity's power of eminent domain.

**Highlighted Provisions:**

This bill:

- ▶ enacts provisions that require the Office of the Property Rights Ombudsman to provide certain information on its website;
- ▶ amends provisions related to the proposes for which eminent domain may be used;
- ▶ enacts provisions that require a political subdivision, or a person who seeks to acquire property by eminent domain, to provide a property owner with certain information from the Office of the Property Rights Ombudsman; and
- ▶ makes technical corrections.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**13-43-203**, as last amended by Laws of Utah 2008, Chapters 3, 84, and 382

**78B-6-501**, as last amended by Laws of Utah 2012, Chapter 264

**78B-6-505**, as last amended by Laws of Utah 2012, Chapter 264

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

30 Section 1. Section **13-43-203** is amended to read:

31 **13-43-203. Office of the Property Rights Ombudsman -- Duties.**

32 (1) (a) The Office of the Property Rights Ombudsman shall:

33 [~~(a)~~] (i) develop and maintain expertise in and understanding of takings, eminent  
34 domain, and land use law;

35 (ii) clearly identify the specific information that is prepared for distribution to property  
36 owners whose land is being acquired under the provisions of Section 78B-6-505;

37 [~~(b)~~] (iii) assist state agencies and local governments in developing the guidelines  
38 required by Title 63L, Chapter 4, Constitutional Taking Issues;

39 [~~(c)~~] (iv) at the request of a state agency or local government, assist the state agency or  
40 local government, in analyzing actions with potential takings implications or other land use  
41 issues;

42 [~~(d)~~] (v) advise real property owners who:

43 [~~(i)~~] (A) have a legitimate potential or actual takings claim against a state or local  
44 government entity or have questions about takings, eminent domain, and land use law; or

45 [~~(ii)~~] (B) own a parcel of property that is landlocked, as to the owner's rights and  
46 options with respect to obtaining access to a public street;

47 [~~(e)~~] (vi) identify state or local government actions that have potential takings  
48 implications and, if appropriate, advise those state or local government entities about those  
49 implications; and

50 [~~(f)~~] (vii) provide information to private citizens, civic groups, government entities,  
51 and other interested parties about takings, eminent domain, and land use law and their rights,  
52 including a right to just compensation, and responsibilities under the takings, eminent domain,  
53 or land use laws through seminars and publications, and by other appropriate means.

54 (b) The Office of the Property Rights Ombudsman shall:

55 (i) provide the information described in Section 78B-6-505 on its website in a form  
56 that is easily accessible; and

57 (ii) ensure that the information is current.

58 (2) The Office of the Property Rights Ombudsman may not represent private property  
59 owners, state agencies, or local governments in court or in adjudicative proceedings under Title  
60 63G, Chapter 4, Administrative Procedures Act.

61 (3) No member of the Office of the Property Rights Ombudsman nor a neutral third  
62 party rendering an advisory opinion under Section 13-43-205 or 13-43-206, may be compelled  
63 to testify in a civil action filed concerning the subject matter of any review, mediation, or  
64 arbitration by, or arranged through, the office.

65 (4) (a) Except as provided in Subsection (4)(b), evidence of a review by the Office of  
66 the Property Rights Ombudsman and the opinions, writings, findings, and determinations of the  
67 Office of the Property Rights Ombudsman are not admissible as evidence in a judicial action.

68 (b) Subsection (4)(a) does not apply to:

69 (i) actions brought under authority of Title 78A, Chapter 8, Small Claims Courts;

70 (ii) a judicial confirmation or review of the arbitration itself as authorized in Title 78B,  
71 Chapter 11, Utah Uniform Arbitration Act;

72 (iii) actions for de novo review of an arbitration award or issue brought under the  
73 authority of Subsection 13-43-204(3)(a)(i); or

74 (iv) advisory opinions provided for in Sections 13-43-205 and 13-43-206.

75 Section 2. Section **78B-6-501** is amended to read:

76 **78B-6-501. Eminent domain -- Uses for which right may be exercised.**

77 Subject to the provisions of this part, the right of eminent domain may be exercised on  
78 behalf of the following public uses:

79 (1) all public uses authorized by the federal government;

80 (2) public buildings and grounds for the use of the state, and all other public uses  
81 authorized by the Legislature;

82 (3) (a) public buildings and grounds for the use of any county, city, town, or board of  
83 education;

84 (b) reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water or  
85 sewage, including to or from a development, for the use of the inhabitants of any county, city,

86 or town, or for the draining of any county, city, or town;

87 (c) the raising of the banks of streams, removing obstructions from streams, and  
88 widening, deepening, or straightening their channels;

89 (d) bicycle paths and sidewalks adjacent to paved roads;

90 (e) roads, byroads, streets, and alleys for public vehicular use, including for access to a  
91 development, excluding trails, paths, or other ways for walking, hiking, bicycling, equestrian  
92 use, or other recreational uses, or whose primary purpose is as a foot path, equestrian trail,  
93 bicycle path, or walkway; and

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

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

98 (5) reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and pipes  
99 for the supplying of persons, mines, mills, smelters or other works for the reduction of ores,  
100 with water for domestic or other uses, or for irrigation purposes, or for the draining and  
101 reclaiming of lands, or for the floating of logs and lumber on streams not navigable, or for solar  
102 evaporation ponds and other facilities for the recovery of minerals in solution;

103 (6) (a) roads, railroads, tramways, tunnels, ditches, flumes, pipes, and dumping places  
104 to access or facilitate the milling, smelting, or other reduction of ores, or the working of mines,  
105 quarries, coal mines, or mineral deposits including oil, gas, and minerals in solution;

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

109 (c) mill dams;

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

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

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

119 (7) byroads leading from a highway to:

120 (a) a residence; or

121 [~~(b)~~ a development; or]

122 [~~(c)~~] (b) a farm;

123 (8) telegraph, telephone, electric light and electric power lines, and sites for electric  
124 light and power plants;

125 (9) sewage service for:

126 (a) a city, a town, or any settlement of not [~~less~~] fewer than 10 families;

127 [~~(b)~~ a development;]

128 [~~(c)~~] (b) a public building belonging to the state; or

129 [~~(d)~~] (c) a college or university;

130 (10) canals, reservoirs, dams, ditches, flumes, aqueducts, and pipes for supplying and  
131 storing water for the operation of machinery for the purpose of generating and transmitting  
132 electricity for power, light or heat;

133 (11) cemeteries and public parks, except for a park whose primary use is:

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

135 (b) to connect other trails, paths, or other ways for walking, hiking, bicycling, or  
136 equestrian use;

137 (12) pipelines for the purpose of conducting any and all liquids connected with the  
138 manufacture of beet sugar; and

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

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

152 Section 3. Section **78B-6-505** is amended to read:

153 **78B-6-505. Negotiation and disclosure required before filing an eminent domain**  
154 **action.**

155 (1) A political subdivision of the state that seeks to acquire property by eminent  
156 domain or that intends to use eminent domain to acquire property if the property cannot be  
157 acquired in a voluntary transaction shall:

158 (a) before the governing body, as defined in Subsection 78B-6-504(2)(a), of the  
159 political subdivision takes a final vote to approve the filing of an eminent domain action, make  
160 a reasonable effort to negotiate with the property owner for the purchase of the property; and

161 (b) except as provided in Subsection (3), as early in the negotiation process described  
162 in Subsection (1)(a) as practicable, but no later than 14 days before the day on which a final  
163 vote is taken to approve the filing of an eminent domain action:

164 (i) advise the property owner of the owner's rights to mediation and arbitration under  
165 Section 78B-6-522, including the name and current telephone number of the property rights  
166 ombudsman, established in Title 13, Chapter 43, Property Rights Ombudsman Act; ~~and~~

167 (ii) provide the property owner a complete printed copy of the materials provided on  
168 the Office of the Property Rights Ombudsman website in accordance with Section 13-43-203  
169 regarding the acquisition of property for a public purpose and a property owner's right to just

170 compensation; and

171           ~~(ii)~~ (iii) provide the property owner a written statement explaining that oral  
172 representations or promises made during the negotiation process are not binding upon the  
173 person seeking to acquire the property by eminent domain.

174           (2) A person, other than a political subdivision of the state, that seeks to acquire  
175 property by eminent domain or that intends to use eminent domain to acquire property if the  
176 property cannot be acquired in a voluntary transaction shall:

177           (a) before filing an eminent domain action, make a reasonable effort to negotiate with  
178 the property owner for the purchase of the property; and

179           (b) except as provided in Subsection (3), as early in the negotiation process described  
180 in Subsection (2)(a) as practicable, but no later than 14 days before the day on which the person  
181 files an eminent domain action:

182           (i) advise the property owner of the owner's rights to mediation and arbitration under  
183 Section 78B-6-522, including the name and current telephone number of the property rights  
184 ombudsman, established in Title 13, Chapter 43, Property Rights Ombudsman Act; ~~and~~

185           (ii) provide the property owner a complete printed copy of the materials provided on  
186 the Office of the Property Rights Ombudsman website in accordance with Section 13-43-203  
187 regarding the acquisition of property for a public purpose and a property owner's right to just  
188 compensation; and

189           ~~(ii)~~ (iii) provide the property owner a written statement explaining that oral  
190 representations or promises made during the negotiation process are not binding upon the  
191 person seeking to acquire the property by eminent domain.

192           (3) The court may, for good cause, shorten the 14-day period described in Subsection  
193 (1)(b) or (2)(b).