

EMINENT DOMAIN AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lee B. Perry

Senate Sponsor: _____

LONG TITLE

Committee Note:

The Political Subdivisions Interim Committee recommended this bill.

General Description:

This bill amends provisions of the eminent domain code.

Highlighted Provisions:

This bill:

- ▶ amends condemnation notice requirements for a municipality and project entity;
- ▶ amends provisions relating to an arbitration or mediation facilitated by the Office of the Property Rights Ombudsman;
- ▶ authorizes a private property owner to request a written advisory opinion to determine if a condemning entity has occupied the owner's property;
- ▶ amends the public uses for which the right of eminent domain may be exercised;
- ▶ requires a political subdivision or other person exercising the right of eminent domain to provide a written statement of certain disclosures to a private property owner; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **10-8-2**, as last amended by Laws of Utah 2013, Chapter 445

31 **11-13-314**, as last amended by Laws of Utah 2008, Chapter 3

32 **13-43-204**, as last amended by Laws of Utah 2011, Chapter 385

33 **13-43-205**, as last amended by Laws of Utah 2013, Chapter 200

34 **13-43-206**, as last amended by Laws of Utah 2011, Chapter 47

35 **78B-6-501**, as last amended by Laws of Utah 2013, Chapter 327

36 **78B-6-505**, as last amended by Laws of Utah 2013, Chapter 327

37 **78B-6-522**, as last amended by Laws of Utah 2011, Chapter 385



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

40 Section 1. Section **10-8-2** is amended to read:

41 **10-8-2. Appropriations -- Acquisition and disposal of property -- Municipal**
42 **authority -- Corporate purpose -- Procedure -- Notice of intent to acquire real property.**

43 (1) (a) A municipal legislative body may:

44 (i) appropriate money for corporate purposes only;

45 (ii) provide for payment of debts and expenses of the corporation;

46 (iii) subject to Subsections (4) and (5), purchase, receive, hold, sell, lease, convey, and
47 dispose of real and personal property for the benefit of the municipality, whether the property is
48 within or without the municipality's corporate boundaries, if the action is in the public interest
49 and complies with other law;

50 (iv) improve, protect, and do any other thing in relation to this property that an
51 individual could do; and

52 (v) subject to Subsection (2) and after first holding a public hearing, authorize
53 municipal services or other nonmonetary assistance to be provided to or waive fees required to
54 be paid by a nonprofit entity, whether or not the municipality receives consideration in return.

55 (b) A municipality may:

56 (i) furnish all necessary local public services within the municipality;

57 (ii) purchase, hire, construct, own, maintain and operate, or lease public utilities
58 located and operating within and operated by the municipality; and

59 (iii) subject to Subsection (1)(c), acquire by eminent domain, or otherwise, property
60 located inside or outside the corporate limits of the municipality and necessary for any of the
61 purposes stated in Subsections (1)(b)(i) and (ii), subject to restrictions imposed by Title 78B,
62 Chapter 6, Part 5, Eminent Domain, and general law for the protection of other communities.

63 (c) Each municipality that intends to acquire property by eminent domain under
64 Subsection (1)(b) shall ~~upon the first contact with the owner of the property sought to be~~
65 ~~acquired, deliver to the owner a copy of a booklet or other materials provided by the Office of~~
66 ~~the Property Rights Ombudsman, created under Section 13-43-201, dealing with the property~~
67 ~~owner's rights in an eminent domain proceeding] comply with the requirements of Section~~
68 78B-6-505.

69 (d) Subsection (1)(b) may not be construed to diminish any other authority a
70 municipality may claim to have under the law to acquire by eminent domain property located
71 inside or outside the municipality.

72 (2) (a) Services or assistance provided pursuant to Subsection (1)(a)(v) is not subject to
73 the provisions of Subsection (3).

74 (b) The total amount of services or other nonmonetary assistance provided or fees
75 waived under Subsection (1)(a)(v) in any given fiscal year may not exceed 1% of the
76 municipality's budget for that fiscal year.

77 (3) It is considered a corporate purpose to appropriate money for any purpose that, in
78 the judgment of the municipal legislative body, provides for the safety, health, prosperity,
79 moral well-being, peace, order, comfort, or convenience of the inhabitants of the municipality
80 subject to the following:

81 (a) The net value received for any money appropriated shall be measured on a
82 project-by-project basis over the life of the project.

83 (b) The criteria for a determination under this Subsection (3) shall be established by the
84 municipality's legislative body. A determination of value received, made by the municipality's
85 legislative body, shall be presumed valid unless it can be shown that the determination was
86 arbitrary, capricious, or illegal.

87 (c) The municipality may consider intangible benefits received by the municipality in
88 determining net value received.

89 (d) (i) Prior to the municipal legislative body making any decision to appropriate any

90 funds for a corporate purpose under this section, a public hearing shall be held.

91 (ii) Notice of the hearing described in Subsection (3)(d)(i) shall be published:

92 (A) (I) in a newspaper of general circulation at least 14 days before the date of the
93 hearing; or

94 (II) if there is no newspaper of general circulation, by posting notice in at least three
95 conspicuous places within the municipality for the same time period; and

96 (B) on the Utah Public Notice Website created in Section [63F-1-701](#), at least 14 days
97 before the date of the hearing.

98 (e) A study shall be performed before notice of the public hearing is given and shall be
99 made available at the municipality for review by interested parties at least 14 days immediately
100 prior to the public hearing, setting forth an analysis and demonstrating the purpose for the
101 appropriation. In making the study, the following factors shall be considered:

102 (i) what identified benefit the municipality will receive in return for any money or
103 resources appropriated;

104 (ii) the municipality's purpose for the appropriation, including an analysis of the way
105 the appropriation will be used to enhance the safety, health, prosperity, moral well-being,
106 peace, order, comfort, or convenience of the inhabitants of the municipality; and

107 (iii) whether the appropriation is necessary and appropriate to accomplish the
108 reasonable goals and objectives of the municipality in the area of economic development, job
109 creation, affordable housing, blight elimination, job preservation, the preservation of historic
110 structures and property, and any other public purpose.

111 (f) (i) An appeal may be taken from a final decision of the municipal legislative body,
112 to make an appropriation.

113 (ii) The appeal shall be filed within 30 days after the date of that decision, to the
114 district court.

115 (iii) Any appeal shall be based on the record of the proceedings before the legislative
116 body.

117 (iv) A decision of the municipal legislative body shall be presumed to be valid unless
118 the appealing party shows that the decision was arbitrary, capricious, or illegal.

119 (g) The provisions of this Subsection (3) apply only to those appropriations made after
120 May 6, 2002.

121 (h) This section applies only to appropriations not otherwise approved pursuant to Title
122 10, Chapter 5, Uniform Fiscal Procedures Act for Utah Towns, or Title 10, Chapter 6, Uniform
123 Fiscal Procedures Act for Utah Cities.

124 (4) (a) Before a municipality may dispose of a significant parcel of real property, the
125 municipality shall:

126 (i) provide reasonable notice of the proposed disposition at least 14 days before the
127 opportunity for public comment under Subsection (4)(a)(ii); and

128 (ii) allow an opportunity for public comment on the proposed disposition.

129 (b) Each municipality shall, by ordinance, define what constitutes:

130 (i) a significant parcel of real property for purposes of Subsection (4)(a); and

131 (ii) reasonable notice for purposes of Subsection (4)(a)(i).

132 (5) (a) Except as provided in Subsection (5)(d), each municipality intending to acquire
133 real property for the purpose of expanding the municipality's infrastructure or other facilities
134 used for providing services that the municipality offers or intends to offer shall provide written
135 notice, as provided in this Subsection (5), of its intent to acquire the property if:

136 (i) the property is located:

137 (A) outside the boundaries of the municipality; and

138 (B) in a county of the first or second class; and

139 (ii) the intended use of the property is contrary to:

140 (A) the anticipated use of the property under the general plan of the county in whose
141 unincorporated area or the municipality in whose boundaries the property is located; or

142 (B) the property's current zoning designation.

143 (b) Each notice under Subsection (5)(a) shall:

144 (i) indicate that the municipality intends to acquire real property;

145 (ii) identify the real property; and

146 (iii) be sent to:

147 (A) each county in whose unincorporated area and each municipality in whose
148 boundaries the property is located; and

149 (B) each affected entity.

150 (c) A notice under this Subsection (5) is a protected record as provided in Subsection
151 [63G-2-305\(8\)](#).

152 (d) (i) The notice requirement of Subsection (5)(a) does not apply if the municipality
153 previously provided notice under Section 10-9a-203 identifying the general location within the
154 municipality or unincorporated part of the county where the property to be acquired is located.

155 (ii) If a municipality is not required to comply with the notice requirement of
156 Subsection (5)(a) because of application of Subsection (5)(d)(i), the municipality shall provide
157 the notice specified in Subsection (5)(a) as soon as practicable after its acquisition of the real
158 property.

159 Section 2. Section 11-13-314 is amended to read:

160 **11-13-314. Eminent domain authority of certain commercial project entities.**

161 (1) (a) Subject to Subsection (2), a commercial project entity that existed as a project
162 entity before January 1, 1980 may, with respect to a project or facilities providing additional
163 project capacity in which the commercial project entity has an interest, acquire property within
164 the state through eminent domain, subject to restrictions imposed by Title 78B, Chapter 6, Part
165 5, Eminent Domain, and general law for the protection of other communities.

166 (b) Subsection (1)(a) may not be construed to:

167 (i) give a project entity the authority to acquire water rights by eminent domain; or

168 (ii) diminish any other authority a project entity may claim to have under the law to
169 acquire property by eminent domain.

170 (2) Each project entity that intends to acquire property by eminent domain under
171 Subsection (1)(a) shall ~~upon the first contact with the owner of the property sought to be~~
172 ~~acquired, deliver to the owner a copy of a booklet or other materials provided by the property~~
173 ~~rights ombudsman, created under Section 13-43-201, dealing with the property owner's rights~~
174 ~~in an eminent domain proceeding] comply with the requirements of Section 78B-6-505.~~

175 Section 3. Section 13-43-204 is amended to read:

176 **13-43-204. Office of the Property Rights Ombudsman -- Arbitration or mediation**
177 **of disputes.**

178 (1) If requested by the private property owner and if otherwise appropriate, the Office
179 of the Property Rights Ombudsman shall mediate, or conduct or arrange arbitration for, a
180 dispute between the owner and a government entity or other type of condemning entity:

181 (a) involving taking or eminent domain issues;

182 (b) involved in an action for eminent domain under Title 78B, Chapter 6, Part 5,

183 Eminent Domain; or

184 (c) involving relocation assistance under Title 57, Chapter 12, Utah Relocation
185 Assistance Act.

186 (2) If arbitration or mediation is requested by a private property owner under this
187 section, Section 57-12-14 or 78B-6-522, and arranged by the Office of the Property Rights
188 Ombudsman, the government entity or condemning entity shall participate in the mediation or
189 arbitration as if the matter were ordered to mediation or arbitration by a court.

190 (3) (a) (i) In conducting or arranging for arbitration under Subsection (1), the Office of
191 the Property Rights Ombudsman shall follow the procedures and requirements of Title 78B,
192 Chapter 11, Utah Uniform Arbitration Act.

193 (ii) In applying Title 78B, Chapter 11, Utah Uniform Arbitration Act, the arbitrator and
194 parties shall treat the matter as if:

195 (A) it were ordered to arbitration by a court; and

196 (B) the Office of the Property Rights Ombudsman or other arbitrator chosen as
197 provided for in this section was appointed as arbitrator by the court.

198 (iii) For the purpose of an arbitration conducted under this section, if the dispute to be
199 arbitrated is not already the subject of legal action, the district court having jurisdiction over
200 the county where the private property involved in the dispute is located is the court referred to
201 in Title 78B, Chapter 11, Utah Uniform Arbitration Act.

202 (iv) An arbitration award under this chapter may not be vacated under the provisions of
203 Subsection 78B-11-124(1)(e) because of the lack of an arbitration agreement between the
204 parties.

205 (b) The Office of the Property Rights Ombudsman shall issue a written statement
206 declining to mediate, arbitrate, or to appoint an arbitrator when, in the opinion of the Office of
207 the Property Rights Ombudsman:

208 (i) the issues are not ripe for review;

209 (ii) assuming the alleged facts are true, no cause of action exists under United States or
210 Utah law;

211 (iii) all issues raised are beyond the scope of the Office of the Property Rights
212 Ombudsman's statutory duty to review; or

213 (iv) the mediation or arbitration is otherwise not appropriate.

214 (c) (i) The Office of the Property Rights Ombudsman shall appoint another person to
215 arbitrate a dispute when:

216 (A) either party objects to the Office of the Property Rights Ombudsman serving as the
217 arbitrator and agrees to pay for the services of another arbitrator;

218 (B) the Office of the Property Rights Ombudsman declines to arbitrate the dispute for a
219 reason other than those stated in Subsection (3)(b) and one or both parties are willing to pay for
220 the services of another arbitrator; or

221 (C) the Office of the Property Rights Ombudsman determines that it is appropriate to
222 appoint another person to arbitrate the dispute with no charge to the parties for the services of
223 the appointed arbitrator.

224 (ii) In appointing another person to arbitrate a dispute, the Office of the Property Rights
225 Ombudsman shall appoint an arbitrator who is agreeable to:

226 (A) both parties; or

227 (B) the Office of the Property Rights Ombudsman and the party paying for the
228 arbitrator.

229 (iii) The Office of the Property Rights Ombudsman may, on its own initiative or upon
230 agreement of both parties, appoint a panel of arbitrators to conduct the arbitration.

231 (iv) The Department of Commerce may pay an arbitrator per diem and reimburse
232 expenses incurred in the performance of the arbitrator's duties at the rates established by the
233 Division of Finance under Sections [63A-3-106](#) and [63A-3-107](#).

234 (d) In arbitrating a dispute, the arbitrator shall apply the relevant statutes, case law,
235 regulations, and rules of Utah and the United States in conducting the arbitration and in
236 determining the award.

237 (e) The property owner and government entity, or other condemning entity, may agree
238 in advance of arbitration that the arbitration is binding and that no de novo review may occur.

239 (f) Arbitration by or through the Office of the Property Rights Ombudsman is not
240 necessary before bringing legal action to adjudicate any claim.

241 (g) The lack of arbitration by or through the Office of the Property Rights Ombudsman
242 does not constitute, and may not be interpreted as constituting, a failure to exhaust available
243 administrative remedies or as a bar to bringing legal action.

244 (h) Arbitration under this section is not subject to Title 63G, Chapter 4, Administrative

245 Procedures Act, or Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act.

246 (i) Within 30 days after an arbitrator issues a final award, and except as provided in
247 Subsection (3)(e), any party to the arbitration may submit the dispute, the award, or any issue
248 upon which the award is based, to the district court for review by trial de novo.

249 (4) The filing with the Office of the Property Rights Ombudsman of a request for
250 mediation or arbitration of a constitutional taking issue does not stay ~~[any]~~:

251 (a) a county or municipal land use decision~~[- including the decision of a board of~~
252 ~~adjustment.]~~;

253 (b) a land use appeal authority decision; or

254 (c) the occupancy of the property.

255 (5) ~~[Members]~~ A member of the Office of the Property Rights Ombudsman, or an
256 arbitrator appointed by the office, may not be compelled to testify in a civil action filed
257 concerning the subject matter of any review, mediation, or arbitration by the Office of the
258 Property Rights Ombudsman.

259 Section 4. Section **13-43-205** is amended to read:

260 **13-43-205. Advisory opinion.**

261 (1) A local government, private entity, or a potentially aggrieved person may, in
262 accordance with Section **13-43-206**, request a written advisory opinion:

263 ~~[(+)]~~ (a) from a neutral third party to determine compliance with:

264 ~~[(a)]~~ (i) Section **10-9a-505.5** and Sections **10-9a-507** through **10-9a-511**;

265 ~~[(b)]~~ (ii) Section **17-27a-505.5** and Sections **17-27a-506** through **17-27a-510**; and

266 ~~[(c)]~~ (iii) Title 11, Chapter 36a, Impact Fees Act; and

267 ~~[(2)(a)]~~ (b) at any time before:

268 (i) a final decision on a land use application by a local appeal authority under Title 11,
269 Chapter 36a, Impact Fees Act, or Section **10-9a-708** or **17-27a-708**;

270 ~~[(b) at any time before]~~ (ii) the deadline for filing an appeal with the district court
271 under Title 11, Chapter 36a, Impact Fees Act, or Section **10-9a-801** or **17-27a-801**, if no local
272 appeal authority is designated to hear the issue that is the subject of the request for an advisory
273 opinion; or

274 ~~[(c) at any time prior to]~~ (iii) the enactment of an impact fee, if the request for an
275 advisory opinion is a request to review and comment on a proposed impact fee facilities plan or

276 a proposed impact fee analysis as defined in Section 11-36a-102.

277 (2) A private property owner may, in accordance with Section 13-43-206, request a
278 written advisory opinion from a neutral third party to determine if a condemning entity:

279 (a) is in occupancy of the owner's property;

280 (b) is occupying the property;

281 (i) for a public use authorized by law; and

282 (ii) without colorable legal or equitable authority; and

283 (c) continues to occupy the property without the owner's consent, the occupancy would
284 constitute a taking of private property for a public use without just compensation.

285 (3) An advisory opinion issued under Subsection (2) may justify an award of attorney
286 fees against a condemning entity in accordance with Section 13-43-206 only if the court finds
287 that the condemning entity:

288 (a) does not have a colorable claim or defense for the entity's actions; and

289 (b) continued occupancy without payment of just compensation and in disregard of the
290 advisory opinion.

291 Section 5. Section 13-43-206 is amended to read:

292 **13-43-206. Advisory opinion -- Process.**

293 (1) A request for an advisory opinion under Section 13-43-205 shall be:

294 (a) filed with the Office of the Property Rights Ombudsman; and

295 (b) accompanied by a filing fee of \$150.

296 (2) The Office of the Property Rights Ombudsman may establish policies providing for
297 partial fee waivers for a person who is financially unable to pay the entire fee.

298 (3) A person requesting an advisory opinion need not exhaust administrative remedies,
299 including remedies described under Section 10-9a-801 or 17-27a-801, before requesting an
300 advisory opinion.

301 (4) The Office of the Property Rights Ombudsman shall:

302 (a) deliver notice of the request to opposing parties indicated in the request;

303 (b) inquire of all parties if there are other necessary parties to the dispute; and

304 (c) deliver notice to all necessary parties.

305 (5) If a governmental entity is an opposing party, the Office of the Property Rights
306 Ombudsman shall deliver the request in the manner provided for in Section 63G-7-401.

307 (6) (a) The Office of the Property Rights Ombudsman shall promptly determine if the
308 parties can agree to a neutral third party to issue an advisory opinion.

309 (b) If no agreement can be reached within four business days after notice is delivered
310 pursuant to Subsections (4) and (5), the Office of the Property Rights Ombudsman shall
311 appoint a neutral third party to issue an advisory opinion.

312 (7) All parties that are the subject of the request for advisory opinion shall:

313 (a) share equally in the cost of the advisory opinion; and

314 (b) provide financial assurance for payment that the neutral third party requires.

315 (8) The neutral third party shall comply with the provisions of Section 78B-11-109,
316 and shall promptly:

317 (a) seek a response from all necessary parties to the issues raised in the request for
318 advisory opinion;

319 (b) investigate and consider all responses; and

320 (c) issue a written advisory opinion within 15 business days after the appointment of
321 the neutral third party under Subsection (6)(b), unless:

322 (i) the parties agree to extend the deadline; or

323 (ii) the neutral third party determines that the matter is complex and requires additional
324 time to render an opinion, which may not exceed 30 calendar days.

325 (9) An advisory opinion shall include a statement of the facts and law supporting the
326 opinion's conclusions.

327 (10) (a) Copies of any advisory opinion issued by the Office of the Property Rights
328 Ombudsman shall be delivered as soon as practicable to all necessary parties.

329 (b) A copy of the advisory opinion shall be delivered to the government entity in the
330 manner provided for in Section 63G-7-401.

331 (11) An advisory opinion issued by the Office of the Property Rights Ombudsman is
332 not binding on any party to, nor admissible as evidence in, a dispute involving land use law
333 except as provided in Subsection (12).

334 (12) (a) Subject to Subsection (12)(d), if the same issue that is the subject of an
335 advisory opinion is listed as a cause of action in litigation, and that cause of action is litigated
336 on the same facts and circumstances and is resolved consistent with the advisory opinion:

337 (i) the substantially prevailing party on that cause of action:

338 (A) may collect reasonable attorney fees and court costs pertaining to the development
339 of that cause of action from the date of the delivery of the advisory opinion to the date of the
340 court's resolution; and

341 (B) shall be refunded an impact fee held to be in violation of Title 11, Chapter 36a,
342 Impact Fees Act, based on the difference between the impact fee paid and what the impact fee
343 should have been if the government entity had correctly calculated the impact fee; and

344 (ii) in accordance with Subsection (12)(b), a government entity shall refund an impact
345 fee held to be in violation of Title 11, Chapter 36a, Impact Fees Act, to the person who was in
346 record title of the property on the day on which the impact fee for the property was paid if:

347 (A) the impact fee was paid on or after the day on which the advisory opinion on the
348 impact fee was issued but before the day on which the final court ruling on the impact fee is
349 issued; and

350 (B) the person described in Subsection (12)(a)(ii) requests the impact fee refund from
351 the government entity within 30 days after the day on which the court issued the final ruling on
352 the impact fee.

353 (b) A government entity subject to Subsection (12)(a)(ii) shall refund the impact fee
354 based on the difference between the impact fee paid and what the impact fee should have been
355 if the government entity had correctly calculated the impact fee.

356 (c) Nothing in this Subsection (12) is intended to create any new cause of action under
357 land use law.

358 (d) Subsection (12)(a) does not apply unless the resolution described in Subsection
359 (12)(a) is final.

360 (13) Unless filed by the local government, a request for an advisory opinion under
361 Section 13-43-205 does not stay the progress of a land use application, [or] the effect of a land
362 use decision[-], or the condemning entity's occupancy of a property.

363 Section 6. Section 78B-6-501 is amended to read:

364 **78B-6-501. Eminent domain -- Uses for which right may be exercised.**

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

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

368 (2) public buildings and grounds for the use of the state, and all other public uses

369 authorized by the Legislature;

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

372 (b) reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water or
373 sewage, including to or from a development, for the use of the inhabitants of any county, city,
374 or town, or for the draining of any county, city, or town;

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

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

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

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

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

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

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

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

397 (c) mill dams;

398 (d) gas, oil or coal pipelines, tanks or reservoirs, including any subsurface stratum or
399 formation in any land for the underground storage of natural gas, and in connection with that,

400 any other interests in property which may be required to adequately examine, prepare,
 401 maintain, and operate underground natural gas storage facilities;

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

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

407 (7) byroads leading from a highway to:

408 (a) a residence; or

409 (b) a farm;

410 (8) ~~[telegraph,]~~ ~~H~~→ ~~[telephone]~~ telecommunications ←~~H~~ , electric light and electric power
 410a lines, ~~[and]~~ sites for electric
 411 light and power plants, or sites for the transmission of broadcast signals from a station licensed
 412 by the Federal Communications Commission in accordance with 47 C.F.R. Part 73 and that
 413 provides emergency broadcast services;

414 (9) sewage service for:

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

416 (b) a public building belonging to the state; or

417 (c) a college or university;

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

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

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

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

425 ~~H~~→ ~~[(12) pipelines for the purpose of conducting any and all liquids connected with the~~
 426 ~~manufacture of beet sugar;]~~ ←~~H~~ and

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

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

440 Section 7. Section **78B-6-505** is amended to read:

441 **78B-6-505. Negotiation and disclosure required before filing an eminent domain**
442 **action.**

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

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

449 (b) except as provided in Subsection ~~[(3)]~~ (4), as early in the negotiation process
450 described in Subsection (1)(a) as practicable, but no later than 14 days before the day on which
451 a final vote is taken to approve the filing of an eminent domain action:

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

455 ~~[(ii) (i) provide the property owner a complete printed copy of the materials provided~~
456 ~~on the Office of the Property Rights Ombudsman website in accordance with Section~~
457 ~~**13-43-203** regarding the acquisition of property for a public purpose and a property owner's~~
458 ~~right to just compensation; and~~

459 ~~[(iii) (ii) provide the property owner a written statement [explaining that oral~~
460 ~~representations or promises made during the negotiation process are not binding upon the~~
461 ~~person seeking to acquire the property by eminent domain.] in substantially the following form:~~

462 "Although this letter is provided as part of an attempt to negotiate with you for the sale
463 of your property or an interest in your property without using the power of eminent domain,
464 [name of political subdivision] may use that power if it is not able to acquire the property by
465 negotiation. Because of that potential, the person negotiating on behalf of the entity is required
466 to provide the following disclosures to you.

467 1. You are entitled to receive just compensation for your property.

468 2. You are entitled to an opportunity to negotiate with [name of political subdivision]
469 over the amount of just compensation before any legal action will be filed.

470 a. You are entitled to an explanation of how the compensation offered for your
471 property was calculated.

472 b. If an appraiser is asked to value your property, you are entitled to accompany the
473 appraiser during an inspection of the property.

474 3. You are entitled to discuss this case with the attorneys at the Office of the Property
475 Rights Ombudsman. The office may be reached at [provide the current contact information for
476 the Office of the Property Rights Ombudsman].

477 4. The Office of the Property Rights Ombudsman is a neutral state office staffed by
478 attorneys experienced in eminent domain. Their purpose is to assist citizens in understanding
479 and protecting their property rights. You are entitled to ask questions and request an
480 explanation of your legal options.

481 5. If you have a dispute with [name of political subdivision] over the amount of just
482 compensation due to you, you are entitled to request free mediation or arbitration of the dispute
483 from the Office of the Property Rights Ombudsman. As part of mediation or arbitration, you
484 are entitled to request a free independent valuation of the property.

485 6. Oral representations or promises made during the negotiation process are not
486 binding upon the entity seeking to acquire the property by eminent domain."

487 (2) Except as provided in Subsection (4), the entity involved in the acquisition of
488 property may not bring a legal action to acquire the property under this chapter until 30 days
489 after the day on which the disclosure and materials required in Subsection (1)(b)(ii) are
490 provided to the property owner.

491 [~~(2)~~] (3) A person, other than a political subdivision of the state, that seeks to acquire
492 property by eminent domain or that intends to use eminent domain to acquire property if the

493 property cannot be acquired in a voluntary transaction shall:

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

496 (b) except as provided in Subsection ~~[(3)]~~ (4), as early in the negotiation process
497 described in Subsection ~~[(2)]~~ (3)(a) as practicable, but no later than ~~[14]~~ 30 days before the day
498 on which the person files an eminent domain action:

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

502 ~~[(ii)]~~ (i) provide the property owner a complete printed copy of the materials provided
503 on the Office of the Property Rights Ombudsman website in accordance with Section
504 13-43-203 regarding the acquisition of property for a public purpose and a property owner's
505 right to just compensation; and

506 ~~[(iii)]~~ (ii) provide the property owner a written statement ~~[explaining that oral
507 representations or promises made during the negotiation process are not binding upon the
508 person seeking to acquire the property by eminent domain.]~~ in substantially the following form:

509 "Although this letter is provided as part of an attempt to negotiate with you for the sale
510 of your property or an interest in your property without using the power of eminent domain,
511 [name of entity] may use that power if it is not able to acquire the property by negotiation.
512 Because of that potential, the person negotiating on behalf of the entity is required to provide
513 the following disclosures to you.

514 1. You are entitled to receive just compensation for your property.

515 2. You are entitled to an opportunity to negotiate with [name of entity] over the amount
516 of just compensation before any legal action will be filed.

517 a. You are entitled to an explanation of how the compensation offered for your
518 property was calculated.

519 b. If an appraiser is asked to value your property, you are entitled to accompany the
520 appraiser during an inspection of the property.

521 3. You are entitled to discuss this case with the attorneys at the Office of the Property
522 Rights Ombudsman. The office may be reached at [provide the current contact information for
523 the Office of the Property Rights Ombudsman].

524 4. The Office of the Property Rights Ombudsman is a neutral state office staffed by
525 attorneys experienced in eminent domain. Their purpose is to assist citizens in understanding
526 and protecting their property rights. You are entitled to ask questions and request an
527 explanation of your legal options.

528 5. If you have a dispute with [name of entity] over the amount of just compensation
529 due to you, you are entitled to request free mediation or arbitration of the dispute from the
530 Office of the Property Rights Ombudsman. As part of mediation or arbitration, you are entitled
531 to request a free independent valuation of the property.

532 6. Oral representations or promises made during the negotiation process are not
533 binding upon the entity seeking to acquire the property by eminent domain."

534 ~~[(3)]~~ (4) The court may, upon a showing of exigent circumstances and for good cause,
535 shorten the 14-day period described in Subsection (1)(b) [~~or (2)(b)~~] or the 30-day period
536 described in Subsection (2) or (3)(b).

537 Section 8. Section **78B-6-522** is amended to read:

538 **78B-6-522. Dispute resolution.**

539 (1) In any dispute between a condemner and a private property owner arising out of this
540 chapter, or a dispute over the taking of private property for a public use without the prior use of
541 eminent domain, the private property owner may submit the dispute for mediation or
542 arbitration to the Office of the Property Rights Ombudsman under Section [13-43-204](#).

543 (2) An action submitted to the Office of the Property Rights Ombudsman under
544 authority of this section does not bar or stay any action for occupancy of premises authorized
545 by Section [78B-6-510](#).

546 (3) (a) (i) A mediator or arbitrator, acting at the request of the property owner under
547 Section [13-43-204](#), has standing in an action brought in district court under this chapter to file
548 with the court a motion to stay the action during the pendency of the mediation or arbitration.

549 (ii) A mediator or arbitrator may not file a motion to stay under Subsection (3)(a)(i)
550 unless the mediator or arbitrator certifies at the time of filing the motion that a stay is
551 reasonably necessary to reach a resolution of the case through mediation or arbitration.

552 (b) If a stay is granted pursuant to a motion under Subsection (3)(a) and the order
553 granting the stay does not specify when the stay terminates, the mediator or arbitrator shall file
554 with the district court a motion to terminate the stay within 30 days after:

- 555 (i) the resolution of the dispute through mediation;
556 (ii) the issuance of a final arbitration award; or
557 (iii) a determination by the mediator or arbitrator that mediation or arbitration is not
558 appropriate.
- 559 (4) (a) The private property owner or displaced person may request that the mediator or
560 arbitrator authorize an additional appraisal.
- 561 (b) If the mediator or arbitrator determines that an additional appraisal is reasonably
562 necessary to reach a resolution of the case, the mediator or arbitrator may:
- 563 (i) have an additional appraisal of the property prepared by an independent appraiser;
564 and
565 (ii) require the condemnor to pay the costs of the first additional appraisal.

Legislative Review Note
as of 11-5-13 1:43 PM

Office of Legislative Research and General Counsel