

Proposed Legislative Amendment Text Allowing Eminent Domain for Trails for Some Transportation Purposes

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

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

- (1) all public uses authorized by the federal government;
- (2) public buildings and grounds for the use of the state, and all other public uses authorized by the Legislature;
- (3)(a) public buildings and grounds for the use of any county, city, town, or board of education;
- (b) reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water for the use of the inhabitants of any county, city, or town, or for the draining of any county, city, or town;
- (c) the raising of the banks of streams, removing obstructions from streams, and widening, deepening, or straightening their channels;
- (d) bicycle paths and sidewalks adjacent to paved roads;
- (e) roads, streets, and alleys for public vehicular use, excluding trails, paths, or other ways for walking, hiking, bicycling, equestrian use, or other recreational uses, or whose primary purpose is as a foot path, equestrian trail, bicycle path, or walkway, except as allowed by subsection (f);
- (f) trails, foot paths, equestrian trails, bicycle paths, or walkways located within the boundaries or utility service area of a city of the first or second class that are included within a regional transportation plan adopted by a metropolitan planning organization created pursuant to Section 72-1-208.5, but excluding land qualified for agricultural use assessment pursuant to Section 59-2-503; and
- (gf) all other public uses for the benefit of any county, city, or town, or its inhabitants;
- (4) 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;
- (5) reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and pipes 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 the floating of logs and lumber on streams not navigable, or for solar evaporation ponds and other facilities for the recovery of minerals in solution;
- (6)(a) 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;

(b) 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;

(c) mill dams;

(d) 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;

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

(f) 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;

(7) byroads leading from a highway to:

(a) a residence;

(b) a development; or

(c) a farm;

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

(9) sewage service for:

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

(b) a development;

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

(d) a college or university;

(10) 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;

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

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

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

(12) pipe lines for the purpose of conducting any and all liquids connected with the manufacture of beet sugar; and

(13) 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.