

Scott D. Sandall proposes the following substitute bill:

**Energy User Amendments**

2026 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Scott D. Sandall**

House Sponsor:

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**LONG TITLE**

**General Description:**

This bill modifies the right to exercise eminent domain for energy users.

**Highlighted Provisions:**

This bill:

- prohibits a private party from exercising eminent domain to acquire a right or estate for a pipeline to serve property that is generating energy primarily for the energy generator's own use; and
- modifies the burden of proof if a property owner whose property is being condemned files evidence that the pipeline is intended to be used for energy generation.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

**Utah Code Sections Affected:**

AMENDS:

- 78B-6-501**, as last amended by Laws of Utah 2025, Chapter 277
- 78B-6-502**, as last amended by Laws of Utah 2024, Chapters 25, 350
- 78B-6-503**, as last amended by Laws of Utah 2024, Chapter 350
- 78B-6-508**, as renumbered and amended by Laws of Utah 2008, Chapter 3

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*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:

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

- 30 (i) assessed under Title 59, Chapter 2, Part 5, Farmland Assessment Act; and
- 31 (ii) owned or held by the same family for a continuous period of 100 years or more.
- 32 (b) "Energy generation" means the production of electricity from any source, including
- 33 solar, wind, gas, geothermal, hydroelectric, or thermal.
- 34 (c)(i) "Energy generation facility" means a building, structure, equipment, or system
- 35 necessary for energy generation.
- 36 (ii) "Energy generation facility" includes a substation, an inverter, a transformer, a
- 37 battery energy storage system, a collector system, or an interconnection facility.
- 38 (d) "Mineral or element" means the same as that term is defined in Section 65A-17-101.
- 39 [(+) (e)(i) "Mining use" means:
- 40 (A) the full range of permitted or active activities, from prospecting and
- 41 exploration to reclamation and closure, associated with the exploitation of a
- 42 mineral deposit; and
- 43 (B) the use of the surface, subsurface, groundwater, and surface water of an area
- 44 in connection with the activities described in Subsection[~~(1)(e)(i)(A)~~]
- 45 (1)(e)(i)(A) that have been, are being, or will be conducted.
- 46 (ii) "Mining use" includes, whether conducted on-site or off-site:
- 47 (A) sampling, staking, surveying, exploration, or development activity;
- 48 (B) drilling, blasting, excavating, or tunneling;
- 49 (C) the removal, transport, treatment, deposition, and reclamation of overburden,
- 50 development rock, tailings, and other waste material;
- 51 (D) the recovery of sand and gravel;
- 52 (E) removal, transportation, extraction, beneficiation, or processing of ore;
- 53 (F) use of solar evaporation ponds and other facilities for the recovery of minerals
- 54 in solution;
- 55 (G) smelting, refining, autoclaving, or other primary or secondary processing
- 56 operation;
- 57 (H) the recovery of any mineral left in residue from a previous extraction or
- 58 processing operation;
- 59 (I) a mining activity that is identified in a work plan or permitting document;
- 60 (J) the use, operation, maintenance, repair, replacement, construction, or alteration
- 61 of a building, structure, facility, equipment, machine, tool, or other material or
- 62 property that results from or is used in a surface or subsurface mining operation
- 63 or activity;

- 64 (K) an accessory, incidental, or ancillary activity or use, both active and passive,  
 65 including a utility, private way or road, pipeline, land excavation, working,  
 66 embankment, pond, gravel excavation, mining waste, conveyor, power line,  
 67 trackage, storage, reserve, passive use area, buffer zone, and power production  
 68 facility;  
 69 (L) the construction of a storage, factory, processing, or maintenance facility; and  
 70 (M) an activity described in Subsection 40-8-4(19)(a).

71 (f) "Objective evidence" means:

72 (i) a development plan that includes at least one of the following:

73 (A) an executed site control, lease, or easement agreement;

74 (B) a filed application for a permit or an approved permit;

75 (C) an executed interconnection request or agreement; or

76 (D) a filed or approved certificate, license, or other similar government  
 77 authorization; or

78 (ii) substantial action toward development.

79 [(2)] (g)(i) "Pipeline" means a pipeline, conduit, or related right-of-way or easement  
 80 used to transport natural gas, petroleum, a petroleum product, hydrogen, carbon  
 81 dioxide, or other gaseous or liquid substance.

82 (ii) "Pipeline" includes a facility that is reasonably necessary to the operation of the  
 83 pipeline.

84 (2) Except as provided in Subsections (3), (4), [~~and~~](5), and (7) and subject to the  
 85 provisions of this part, the right of eminent domain may be exercised on behalf of the  
 86 following public uses:

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

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

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

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

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

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

- 98 (v) roads, byroads, streets, and alleys for public vehicular use, including for access to  
99 a development; and
- 100 (vi) all other public uses for the benefit of any county, city, or town, or its inhabitants;
- 101 (d) wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and  
102 turnpike roads, roads for transportation by traction engines or road locomotives,  
103 roads for logging or lumbering purposes, and railroads and street railways for public  
104 transportation;
- 105 (e) reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and pipes for  
106 the supplying of persons, mines, mills, smelters or other works for the reduction of  
107 ores, with water for domestic or other uses, or for irrigation purposes, or for the  
108 draining and reclaiming of lands, or for solar evaporation ponds and other facilities  
109 for the recovery of minerals or elements in solution;
- 110 (f)(i) roads, railroads, tramways, tunnels, ditches, flumes, pipes, and dumping places  
111 to access or facilitate the milling, smelting, or other reduction of ores, or the  
112 working of mines, quarries, coal mines, or mineral deposits including oil, gas, and  
113 minerals or elements in solution;
- 114 (ii) outlets, natural or otherwise, for the deposit or conduct of tailings, refuse or water  
115 from mills, smelters or other works for the reduction of ores, or from mines,  
116 quarries, coal mines or mineral deposits including minerals or elements in solution;
- 117 (iii) mill dams;
- 118 (iv) gas, oil or coal pipelines, tanks or reservoirs, including any subsurface stratum or  
119 formation in any land for the underground storage of natural gas, and in  
120 connection with that, any other interests in property which may be required to  
121 adequately examine, prepare, maintain, and operate underground natural gas  
122 storage facilities;
- 123 (v) subject to Subsection (6), solar evaporation ponds and other facilities for the  
124 recovery of minerals in solution; and
- 125 (vi) any occupancy in common by the owners or possessors of different mines,  
126 quarries, coal mines, mineral deposits, mills, smelters, or other places for the  
127 reduction of ores, or any place for the flow, deposit or conduct of tailings or refuse  
128 matter;
- 129 (g) byroads leading from a highway to:
- 130 (i) a residence; or
- 131 (ii) a farm;

- 132 (h) telecommunications, electric light and electric power lines, sites for electric light and  
133 power plants, or sites for the transmission of broadcast signals from a station licensed  
134 by the Federal Communications Commission in accordance with 47 C.F.R. Part 73  
135 and that provides emergency broadcast services;
- 136 (i) sewage service for:
- 137 (i) a city, a town, or any settlement of not fewer than 10 families;
- 138 (ii) a public building belonging to the state; or
- 139 (iii) a college or university;
- 140 (j) canals, reservoirs, dams, ditches, flumes, aqueducts, and pipes for supplying and  
141 storing water for the operation of machinery for the purpose of generating and  
142 transmitting electricity for power, light or heat;
- 143 (k) cemeteries and public parks; and
- 144 (l) sites for mills, smelters or other works for the reduction of ores and necessary to their  
145 successful operation, including the right to take lands for the discharge and natural  
146 distribution of smoke, fumes, and dust, produced by the operation of works, provided  
147 that the powers granted by this section may not be exercised in any county where the  
148 population exceeds 20,000, or within one mile of the limits of any city or  
149 incorporated town nor unless the proposed condemner has the right to operate by  
150 purchase, option to purchase or easement, at least 75% in value of land acreage  
151 owned by persons or corporations situated within a radius of four miles from the mill,  
152 smelter or other works for the reduction of ores; nor beyond the limits of the  
153 four-mile radius; nor as to lands covered by contracts, easements, or agreements  
154 existing between the condemner and the owner of land within the limit and providing  
155 for the operation of such mill, smelter, or other works for the reduction of ores; nor  
156 until an action shall have been commenced to restrain the operation of such mill,  
157 smelter, or other works for the reduction of ores.
- 158 (3) The right of eminent domain may not be exercised on behalf of the following uses:
- 159 (a) except as provided in Subsection (2)(c)(iv), trails, paths, or other ways for walking,  
160 hiking, bicycling, equestrian use, or other recreational uses, or whose primary  
161 purpose is as a foot path, equestrian trail, bicycle path, or walkway;
- 162 (b)(i) a public park whose primary purpose is:
- 163 (A) as a trail, path, or other way for walking, hiking, bicycling, or equestrian use;
- 164 or
- 165 (B) to connect other trails, paths, or other ways for walking, hiking, bicycling, or

- 166 equestrian use; or
- 167 (ii) a public park established on real property that is:
- 168 (A) a century farm; and
- 169 (B) located in a county of the first class.
- 170 (4)(a) The right of eminent domain may not be exercised within a migratory bird
- 171 production area created on or before December 31, 2020, under Title 23A, Chapter
- 172 13, Migratory Bird Production Area, except as follows:
- 173 (i) subject to Subsection (4)(b), an electric utility may condemn land within a
- 174 migratory bird production area located in a county of the first class only for the
- 175 purpose of installing buried power lines;
- 176 (ii) an electric utility may condemn land within a migratory bird production area in a
- 177 county other than a county of the first class to install:
- 178 (A) buried power lines; or
- 179 (B) a new overhead transmission line that is parallel to and abutting an existing
- 180 overhead transmission line or collocated within an existing overhead
- 181 transmission line right of way; or
- 182 (iii) the Department of Transportation may exercise eminent domain for the purpose
- 183 of the construction of the West Davis Highway.
- 184 (b) Before exercising the right of eminent domain under Subsection (4)(a)(i), the electric
- 185 utility shall demonstrate that:
- 186 (i) the proposed condemnation would not have an unreasonable adverse effect on the
- 187 preservation, use, and enhancement of the migratory bird production area; and
- 188 (ii) there is no reasonable alternative to constructing the power line within the
- 189 boundaries of a migratory bird production area.
- 190 (5) If the intended public purpose is for a mining use, a private person may not exercise the
- 191 power of eminent domain over property, or an interest in property, that is already used
- 192 for a mining use within the boundary of:
- 193 (a) a permit area, as defined in Section 40-8-4;
- 194 (b) an area for which a permit has been issued by the Division of Water Quality, as part
- 195 of the underground injection control program, under rules made by the Water Quality
- 196 Board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 197 (c) private property; or
- 198 (d) an area under a state or federal lease.
- 199 (6)(a) For the purpose of solar evaporation ponds and other facilities for the recovery of

200 minerals or elements in solution on or from the Great Salt Lake, a public use includes  
 201 removal or extinguishment, by a state entity, in whole or in part, on Great Salt Lake  
 202 Sovereign lands of:

- 203 (i) a solar evaporation pond;
  - 204 (ii) improvements, property, easements, or rights-of-way appurtenant to a solar  
 205 evaporation pond, including a lease hold; or
  - 206 (iii) other facilities for the recovery of minerals or elements in solution.
- 207 (b) The public use under this Subsection (6) is in the furtherance of the benefits to public  
 208 trust assets attributable to the Great Salt Lake under Section 65A-1-1.

209 (7)(a) A private person may not exercise the power of eminent domain to acquire an  
 210 estate or right for a pipeline to serve a property that is:

- 211 (i) devoted to energy generation primarily for the energy generator's own use or an  
 212 energy generation facility primarily for use by the energy generation facility's  
 213 beneficiary; or
  - 214 (ii) planned to be used, based on objective evidence, for energy generation primarily  
 215 for the energy generator's own use or an energy generation facility primarily for  
 216 use by the energy generation facility's beneficiary.
- 217 (b) The prohibition described in Subsection (7)(a) applies to an eminent domain action  
 218 that is pending on, or occurs on or after, the effective date of this bill.

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

220 **78B-6-502 . Estates and rights that may be taken.**

221 Except as provided in Subsection 78B-6-501(3), (4), [~~or (5)~~] (5), or (7), the following  
 222 estates and rights in lands are subject to being taken for public use:

- 223 (1) a fee simple, when taken for:
  - 224 (a) public buildings or grounds;
  - 225 (b) permanent buildings;
  - 226 (c) reservoirs and dams, and permanent flooding occasioned by them;
  - 227 (d) any permanent flood control structure affixed to the land;
  - 228 (e) an outlet for a flow, a place for the deposit of debris or tailings of a mine, mill,  
 229 smelter, or other place for the reduction of ores; and
  - 230 (f) subject to Subsection 78B-6-501(6), solar evaporation ponds and other facilities for  
 231 the recovery of minerals in solution, except when the surface ground is underlaid  
 232 with minerals, coal, or other deposits sufficiently valuable to justify extraction, only a  
 233 perpetual easement may be taken over the surface ground over the deposits;

- 234 (2) an easement, when taken for any other use; and
- 235 (3) the right of entry upon and occupation of lands, with the right to take from those lands
- 236 earth, gravel, stones, trees, and timber as necessary for a public use.

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

238 **78B-6-503 . Private property which may be taken.**

239 Except as provided in Subsection 78B-6-501(3), (4), [~~or (5)~~] (5), or (7), private property

240 that may be taken under this part includes:

- 241 (1) all real property belonging to any person;
- 242 (2) lands belonging to the state, or to any county, city or incorporated town, not
- 243 appropriated to some public use;
- 244 (3) property appropriated to public use, except that the property may not be taken unless for
- 245 a more necessary public use than that to which the property has already been
- 246 appropriated;
- 247 (4) franchises for toll roads, toll bridges, ferries, and all other franchises, except that the
- 248 franchises may not be taken unless for free highways, railroads, or other more necessary
- 249 public use;
- 250 (5) all rights of way for any and all purposes mentioned in Section 78B-6-501, and any and
- 251 all structures and improvements on the property, and the lands held or used in
- 252 connection with the property, except that:
  - 253 (a) the property is subject to be connected with, crossed, or intersected by any other right
  - 254 of way or improvement or structure;
  - 255 (b) the property is subject to a limited use in common with the owners, when necessary;
  - 256 and
  - 257 (c) uses of crossings, intersections, and connections shall be made in the manner most
  - 258 compatible with the greatest public benefit and the least private injury; and
- 259 (6) all classes of private property not enumerated if the taking is authorized by law.

260 Section 4. Section **78B-6-508** is amended to read:

261 **78B-6-508 . Who may appear and defend -- Burden of proof.**

- 262 (1) [~~All persons~~] A person in occupation of, or having or claiming an interest in, any of
- 263 the property described in the complaint, or in the damages for the taking, [~~though not~~]
- 264 even if the person is not named, including shareholders in a mutual stock water company
- 265 in a proceeding involving the taking of the company or property belonging to the
- 266 company, may appear, plead and defend, each in respect to [~~his~~] the person's own
- 267 property or interest, or that claimed by [~~him~~] the person, in the same manner as if named

268 in the complaint.

269 (2)(a) In a claim involving the exercise of eminent domain in violation of Subsection  
270 78B-6-501(7)(b), a property owner may file a sworn declaration that includes  
271 objective evidence, as defined in Section 78B-6-501, as prima facie evidence of  
272 planned use.

273 (b) Once a property owner files a sworn declaration in accordance with Subsection (2)(a),  
274 the burden of proof shifts to the person exercising eminent domain to rebut the prima  
275 facie evidence by clear and convincing evidence.

276 (c) This Subsection (2) applies to a claim that is pending on, or is made on or after, the  
277 effective date of this bill.

278 **Section 5. Effective Date.**

279 This bill takes effect:

280 (1) except as provided in Subsection (2), May 6, 2026; or

281 (2) if approved by two-thirds of all members elected to each house:

282 (a) upon approval by the governor;

283 (b) without the governor's signature, the day following the constitutional time limit of  
284 Utah Constitution, Article VII, Section 8; or

285 (c) in the case of a veto, the date of veto override.