

Scott D. Sandall proposes the following substitute bill:

Energy User Amendments

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott D. Sandall

House Sponsor:

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- provides the circumstances under which a private party is prohibited from exercising eminent domain to acquire a right or estate for a pipeline to serve property that is generating energy; and

- provides that the prohibition applies to prospective and pending actions for eminent domain.

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

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:

(i) assessed under Title 59, Chapter 2, Part 5, Farmland Assessment Act; and

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

64 including a utility, private way or road, pipeline, land excavation, working,
 65 embankment, pond, gravel excavation, mining waste, conveyor, power line,
 66 trackage, storage, reserve, passive use area, buffer zone, and power production
 67 facility;

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

69 (M) an activity described in Subsection 40-8-4(19)(a).

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

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

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

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

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

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

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

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

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

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

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

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

96 (e) reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and pipes for
 97 the supplying of persons, mines, mills, smelters or other works for the reduction of

- 98 ores, with water for domestic or other uses, or for irrigation purposes, or for the
99 draining and reclaiming of lands, or for solar evaporation ponds and other facilities
100 for the recovery of minerals or elements in solution;
- 101 (f)(i) roads, railroads, tramways, tunnels, ditches, flumes, pipes, and dumping places
102 to access or facilitate the milling, smelting, or other reduction of ores, or the
103 working of mines, quarries, coal mines, or mineral deposits including oil, gas, and
104 minerals or elements in solution;
- 105 (ii) outlets, natural or otherwise, for the deposit or conduct of tailings, refuse or water
106 from mills, smelters or other works for the reduction of ores, or from mines,
107 quarries, coal mines or mineral deposits including minerals or elements in solution;
- 108 (iii) mill dams;
- 109 (iv) gas, oil or coal pipelines, tanks or reservoirs, including any subsurface stratum or
110 formation in any land for the underground storage of natural gas, and in
111 connection with that, any other interests in property which may be required to
112 adequately examine, prepare, maintain, and operate underground natural gas
113 storage facilities;
- 114 (v) subject to Subsection (6), solar evaporation ponds and other facilities for the
115 recovery of minerals in solution; and
- 116 (vi) any occupancy in common by the owners or possessors of different mines,
117 quarries, coal mines, mineral deposits, mills, smelters, or other places for the
118 reduction of ores, or any place for the flow, deposit or conduct of tailings or refuse
119 matter;
- 120 (g) byroads leading from a highway to:
- 121 (i) a residence; or
122 (ii) a farm;
- 123 (h) telecommunications, electric light and electric power lines, sites for electric light and
124 power plants, or sites for the transmission of broadcast signals from a station licensed
125 by the Federal Communications Commission in accordance with 47 C.F.R. Part 73
126 and that provides emergency broadcast services;
- 127 (i) sewage service for:
- 128 (i) a city, a town, or any settlement of not fewer than 10 families;
129 (ii) a public building belonging to the state; or
130 (iii) a college or university;
- 131 (j) canals, reservoirs, dams, ditches, flumes, aqueducts, and pipes for supplying and

- 132 storing water for the operation of machinery for the purpose of generating and
 133 transmitting electricity for power, light or heat;
- 134 (k) cemeteries and public parks; and
- 135 (l) sites for mills, smelters or other works for the reduction of ores and necessary to their
 136 successful operation, including the right to take lands for the discharge and natural
 137 distribution of smoke, fumes, and dust, produced by the operation of works, provided
 138 that the powers granted by this section may not be exercised in any county where the
 139 population exceeds 20,000, or within one mile of the limits of any city or
 140 incorporated town nor unless the proposed condemner has the right to operate by
 141 purchase, option to purchase or easement, at least 75% in value of land acreage
 142 owned by persons or corporations situated within a radius of four miles from the mill,
 143 smelter or other works for the reduction of ores; nor beyond the limits of the
 144 four-mile radius; nor as to lands covered by contracts, easements, or agreements
 145 existing between the condemner and the owner of land within the limit and providing
 146 for the operation of such mill, smelter, or other works for the reduction of ores; nor
 147 until an action shall have been commenced to restrain the operation of such mill,
 148 smelter, or other works for the reduction of ores.
- 149 (3) The right of eminent domain may not be exercised on behalf of the following uses:
- 150 (a) except as provided in Subsection (2)(c)(iv), trails, paths, or other ways for walking,
 151 hiking, bicycling, equestrian use, or other recreational uses, or whose primary
 152 purpose is as a foot path, equestrian trail, bicycle path, or walkway;
- 153 (b)(i) a public park whose primary purpose is:
- 154 (A) as a trail, path, or other way for walking, hiking, bicycling, or equestrian use;
 155 or
- 156 (B) to connect other trails, paths, or other ways for walking, hiking, bicycling, or
 157 equestrian use; or
- 158 (ii) a public park established on real property that is:
- 159 (A) a century farm; and
 160 (B) located in a county of the first class.
- 161 (4)(a) The right of eminent domain may not be exercised within a migratory bird
 162 production area created on or before December 31, 2020, under Title 23A, Chapter
 163 13, Migratory Bird Production Area, except as follows:
- 164 (i) subject to Subsection (4)(b), an electric utility may condemn land within a
 165 migratory bird production area located in a county of the first class only for the

- 166 purpose of installing buried power lines;
- 167 (ii) an electric utility may condemn land within a migratory bird production area in a
168 county other than a county of the first class to install:
- 169 (A) buried power lines; or
- 170 (B) a new overhead transmission line that is parallel to and abutting an existing
171 overhead transmission line or collocated within an existing overhead
172 transmission line right of way; or
- 173 (iii) the Department of Transportation may exercise eminent domain for the purpose
174 of the construction of the West Davis Highway.
- 175 (b) Before exercising the right of eminent domain under Subsection (4)(a)(i), the electric
176 utility shall demonstrate that:
- 177 (i) the proposed condemnation would not have an unreasonable adverse effect on the
178 preservation, use, and enhancement of the migratory bird production area; and
- 179 (ii) there is no reasonable alternative to constructing the power line within the
180 boundaries of a migratory bird production area.
- 181 (5) If the intended public purpose is for a mining use, a private person may not exercise the
182 power of eminent domain over property, or an interest in property, that is already used
183 for a mining use within the boundary of:
- 184 (a) a permit area, as defined in Section 40-8-4;
- 185 (b) an area for which a permit has been issued by the Division of Water Quality, as part
186 of the underground injection control program, under rules made by the Water Quality
187 Board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 188 (c) private property; or
- 189 (d) an area under a state or federal lease.
- 190 (6)(a) For the purpose of solar evaporation ponds and other facilities for the recovery of
191 minerals or elements in solution on or from the Great Salt Lake, a public use includes
192 removal or extinguishment, by a state entity, in whole or in part, on Great Salt Lake
193 Sovereign lands of:
- 194 (i) a solar evaporation pond;
- 195 (ii) improvements, property, easements, or rights-of-way appurtenant to a solar
196 evaporation pond, including a lease hold; or
- 197 (iii) other facilities for the recovery of minerals or elements in solution.
- 198 (b) The public use under this Subsection (6) is in the furtherance of the benefits to public
199 trust assets attributable to the Great Salt Lake under Section 65A-1-1.

- 200 (7)(a) A private person may not exercise the power of eminent domain to acquire an
 201 estate or right for a pipeline to serve a property that is:
- 202 (i) used for energy generation for the energy generator's own use or an energy
 203 generation facility for use by the energy generation facility's beneficiary; or
 204 (ii) planned to be used for energy generation for the energy generator's own use or an
 205 energy generation facility for use by the energy generation facility's beneficiary.
- 206 (b) The prohibition described in Subsection (7)(a) does not apply to an eminent domain
 207 action to acquire an easement to:
- 208 (i) locate a pipeline within an existing utility easement or immediately adjacent to
 209 and parallel with an existing utility line;
 210 (ii) locate a pipeline within or immediately adjacent to and parallel with an existing
 211 or planned roadway; or
 212 (iii) construct a pipeline that will, or has the ability to, serve more than one customer
 213 upon completion.
- 214 (c) The prohibition described in Subsection (7)(a) applies to an eminent domain action
 215 that is pending on, or occurs on or after, the effective date of this bill.

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

217 **78B-6-502 . Estates and rights that may be taken.**

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

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

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

235 **78B-6-503 . Private property which may be taken.**

236 Except as provided in Subsection 78B-6-501(3), (4), [~~or (5)~~] (5), or (7), private property
237 that may be taken under this part includes:

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

257 Section 4. **Effective Date.**

258 This bill takes effect:

- 259 (1) except as provided in Subsection (2), May 6, 2026; or
- 260 (2) if approved by two-thirds of all members elected to each house:
- 261 (a) upon approval by the governor;
- 262 (b) without the governor's signature, the day following the constitutional time limit of
263 Utah Constitution, Article VII, Section 8; or
- 264 (c) in the case of a veto, the date of veto override.