

SB0231S02 compared with SB0231S01

~~{Omitted text}~~ shows text that was in SB0231S01 but was omitted in SB0231S02

inserted text shows text that was not in SB0231S01 but was inserted into SB0231S02

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1

Energy User Amendments
2026 GENERAL SESSION
STATE OF UTAH
Chief Sponsor: Scott D. Sandall
House Sponsor:

2

3 **LONG TITLE**

4 **General Description:**

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

6 **Highlighted Provisions:**

7 This bill:

8 ▸ ~~{prohibits}~~ 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 ~~{primarily for the energy generator's own use}~~ ; and

11 ▸ ~~{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.}~~

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

13 **Money Appropriated in this Bill:**

14 None

15 **Other Special Clauses:**

16 This bill provides a special effective date.

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17 **Utah Code Sections Affected:**

18 AMENDS:

19 **78B-6-501** , as last amended by Laws of Utah 2025, Chapter 277

20 **78B-6-502** , as last amended by Laws of Utah 2024, Chapters 25, 350

21 **78B-6-503** , as last amended by Laws of Utah 2024, Chapter 350

22 ~~**78B-6-508** , as renumbered and amended by Laws of Utah 2008, Chapter 3}~~

22

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

24 Section 1. Section **78B-6-501** is amended to read:

25 **78B-6-501. Eminent domain -- Uses for which right may be exercised -- Limitations on eminent domain.**

28 (1) As used in this section:

29 (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 solar, wind, gas, geothermal, hydroelectric, or thermal.

34 (c)

(i) "Energy generation facility" means a building, structure, equipment, or system necessary for energy generation.

36 (ii) "Energy generation facility" includes a substation, an inverter, a transformer, a 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)~~ (e)

(i) "Mining use" means:

40 (A) the full range of permitted or active activities, from prospecting and exploration to reclamation and closure, associated with the exploitation of a mineral deposit; and

43 (B) the use of the surface, subsurface, groundwater, and surface water of an area in connection with the activities described in Subsection~~[-(1)(e)(i)(A)]~~ (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:

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- 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, 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 in solution;
- 55 (G) smelting, refining, autoclaving, or other primary or secondary processing operation;
- 57 (H) the recovery of any mineral left in residue from a previous extraction or 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 of a building,
structure, facility, equipment, machine, tool, or other material or property that results from or is used
in a surface or subsurface mining operation or activity;
- 64 (K) an accessory, incidental, or ancillary activity or use, both active and passive, including a utility,
private way or road, pipeline, land excavation, working, embankment, pond, gravel excavation,
mining waste, conveyor, power line, trackage, storage, reserve, passive use area, buffer zone, and
power production 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 authorization; or}~~
- 78 ~~{(ii) substantial action toward development.}~~
- 79 [(2)] (g) {(f)}
- (i) "Pipeline" means a pipeline, conduit, or related right-of-way or easement used to transport natural
gas, petroleum, a petroleum product, hydrogen, carbon dioxide, or other gaseous or liquid substance.
- 82 (ii) "Pipeline" includes a facility that is reasonably necessary to the operation of the pipeline.
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(2) Except as provided in Subsections (3), (4), [~~and~~](5), and (7) and subject to the provisions of this part, the right of eminent domain may be exercised on behalf of the 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 authorized by the
Legislature;
- 90 (c)
- (i) public buildings and grounds for the use of any county, city, town, or board of education;
- 92 (ii) reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water or sewage, including to
or from a development, for the use of the inhabitants of any 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 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 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 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;
- 105 (e) 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 solar
evaporation ponds and other facilities for the recovery of minerals or elements in solution;
- 110 (f)
- (i) 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 or elements in solution;
- 114 (ii) 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 or elements in solution;
- 117 (iii) mill dams;

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- 118 (iv) 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;
- 123 (v) subject to Subsection (6), solar evaporation ponds and other facilities for the recovery of minerals in
solution; and
- 125 (vi) 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;
- 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 power
plants, or sites for the transmission of broadcast signals from a station licensed by the Federal
Communications Commission in accordance with 47 C.F.R. Part 73 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 storing water for
the operation of machinery for the purpose of generating and 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 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

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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.

- 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, hiking,
bicycling, equestrian use, or other recreational uses, or whose primary 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; or
- 165 (B) to connect other trails, paths, or other ways for walking, hiking, bicycling, or 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 production area created on or before December 31, 2020, under Title 23A, Chapter 13, Migratory Bird Production Area, except as follows:
- 173 (i) subject to Subsection (4)(b), an electric utility may condemn land within a migratory bird
production area located in a county of the first class only for the purpose of installing buried
power lines;
- 176 (ii) an electric utility may condemn land within a migratory bird production area in a 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 overhead transmission
line or collocated within an existing overhead transmission line right of way; or
- 182 (iii) the Department of Transportation may exercise eminent domain for the purpose of the
construction of the West Davis Highway.
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(b) Before exercising the right of eminent domain under Subsection (4)(a)(i), the electric utility shall demonstrate that:

- 186 (i) the proposed condemnation would not have an unreasonable adverse effect on the 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 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 power of
eminent domain over property, or an interest in property, that is already used 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 of the
underground injection control program, under rules made by the Water Quality 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 minerals
or elements in solution on or from the Great Salt Lake, a public use includes removal or
extinguishment, by a state entity, in whole or in part, on Great Salt Lake Sovereign lands of:
- 203 (i) a solar evaporation pond;
- 204 (ii) improvements, property, easements, or rights-of-way appurtenant to a solar 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 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 estate or right for a
pipeline to serve a property that is:
- 211 (i) { ~~devoted to~~ } ~~used for~~ energy generation { ~~primarily~~ } for the energy generator's own use or an
energy generation facility { ~~primarily~~ } for use by the energy generation facility's beneficiary; or
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(ii) planned to be used ~~{, based on objective evidence, }~~ for energy generation { primarily } for the energy generator's own use or an energy generation facility { primarily } for use by the energy generation facility's beneficiary.

217 (b) The prohibition described in Subsection (7)(a) { applies } does not apply to an eminent domain
action { that is pending on, or occurs on or after, the effective date of this bill. } to acquire an
easement to:

208 (i) locate a pipeline within an existing utility easement or immediately adjacent to and parallel with an
existing utility line;

210 (ii) locate a pipeline within or immediately adjacent to and parallel with an existing or planned
roadway; or

212 (iii) construct a pipeline that will, or has the ability to, serve more than one customer upon completion.

214 (c) The prohibition described in Subsection (7)(a) applies to an eminent domain action 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.**

Except as provided in Subsection 78B-6-501(3), (4), ~~[or (5)]~~ (5), or (7), the following 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, 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 the recovery
of minerals in solution, except when the surface ground is underlaid with minerals, coal, or other
deposits sufficiently valuable to justify extraction, only a 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 earth, gravel,
stones, trees, and timber as necessary for a public use.

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

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

Except as provided in Subsection 78B-6-501(3), (4), [~~or (5)~~] (5), or (7), private property 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 appropriated to some public use;

244 (3) property appropriated to public use, except that the property may not be taken unless for a more necessary public use than that to which the property has already been appropriated;

247 (4) franchises for toll roads, toll bridges, ferries, and all other franchises, except that the franchises may not be taken unless for free highways, railroads, or other more necessary public use;

250 (5) all rights of way for any and all purposes mentioned in Section 78B-6-501, and any and all structures and improvements on the property, and the lands held or used in connection with the property, except that:

253 (a) the property is subject to be connected with, crossed, or intersected by any other right of way or improvement or structure;

255 (b) the property is subject to a limited use in common with the owners, when necessary; and

257 (c) uses of crossings, intersections, and connections shall be made in the manner most 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 the property described in the complaint, or in the damages for the taking, [~~though not~~] even if the person is not named, including shareholders in a mutual stock water company in a proceeding involving the taking of the company or property belonging to the company, may appear, plead and defend, each in respect to [~~his~~] the person's own property or interest, or that claimed by [~~him~~] the person, in the same manner as if named in the complaint.

269 (2)

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

273 (b) Once a property owner files a sworn declaration in accordance with Subsection (2)(a), the burden of proof shifts to the person exercising eminent domain to rebut the prima 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 effective date of this bill.

257 Section 4. **Effective date.**

Effective Date.

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 Utah Constitution, Article VII, Section 8; or

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

3-3-26 11:32 AM