

Second Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 26-0106.01 Christopher McMichael x4775

HOUSE BILL 26-1278

HOUSE SPONSORSHIP

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A BILL FOR AN ACT

101 **CONCERNING THE PRESERVATION OF LOCAL LAND USE AUTHORITY BY**
102 **REQUIRING LOCAL GOVERNMENT APPROVAL BEFORE AN**
103 **INVESTOR-OWNED ELECTRIC UTILITY MAY COMMENCE A**
104 **CONDEMNATION PROCEEDING FOR HIGH-VOLTAGE**
105 **TRANSMISSION INFRASTRUCTURE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill requires that an investor-owned electric utility receive a certificate of public convenience and necessity (certificate) from the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

public utilities commission and obtain all necessary local government land use approvals and permits prior to initiating any condemnation proceedings related to a high-voltage transmission infrastructure project requiring the certificate.

The bill does not change existing application and review processes related to the development of transmission projects that have been established by the public utilities commission or a relevant local government.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares that:

4 (a) Projects built by public utilities fulfill an essential public need,
5 supporting the health, safety, economic prosperity, and welfare of
6 Coloradans by ensuring access to electricity, gas, water, and
7 telecommunications services;

8 (b) Individual property rights are fundamental to our constitutional
9 order, protected by the fifth amendment of the United States constitution
10 and section 15 of article II of the state constitution, which states that
11 "[p]rivate property shall not be taken or damaged, for public or private
12 use, without just compensation";

13 (c) These constitutional provisions prohibit the taking of private
14 property for speculative or undefined public uses, ensuring that
15 condemnations are necessary, justified, and executed with due process;

16 (d) Under Colorado law, investor-owned electric utilities that hold
17 a certificate of public convenience and necessity issued by the public
18 utilities commission may initiate condemnation proceedings prior to
19 obtaining all required local government land use permits and approvals,
20 which creates circumstances in which private property is condemned
21 without certainty that the property is necessary for a final, approved

1 project;

2 (e) Speculative acquisitions of property via condemnation
3 undermine constitutional protections, burden landowners, and erode
4 public trust in both government and utility providers;

5 (f) Local governments exercise their land use powers to regulate
6 development in harmony with local needs, environmental stewardship,
7 and community priorities. Preserving these powers ensures that
8 investor-owned electric utility projects are implemented with full
9 consideration of local impacts while serving statewide and regional public
10 needs.

11 (g) Therefore, it is the intent of the general assembly to protect
12 private property rights, uphold constitutional takings standards, and
13 reinforce local government land use authority by clarifying that no
14 condemnation action taken by an investor-owned electric utility may
15 occur until final approval of the project, including local government
16 authorization, has been granted.

17 **SECTION 2.** In Colorado Revised Statutes, **add** 40-5-101.3 as
18 follows:

19 **40-5-101.3. Construction of electric transmission**
20 **infrastructure - certificate of public convenience and necessity -**
21 **eminent domain - approval by local government - definitions.**

22 (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
23 REQUIRES:

24 (a) "INVESTOR-OWNELECTRICUTILITY" OR "UTILITY" MEANS AN
25 INVESTOR-OWNEDUTILITY THAT PROVIDES RETAIL ELECTRIC SERVICE AND
26 IS REGULATED BY THE COMMISSION.

27 (b) "LOCAL GOVERNMENT" MEANS A COUNTY, HOME RULE OR

1 STATUTORY CITY, TOWN, TERRITORIAL CHARTER CITY, OR CITY AND
2 COUNTY.

3 (c) "TRANSMISSION INFRASTRUCTURE" MEANS HIGH-VOLTAGE
4 TRANSMISSION INFRASTRUCTURE THAT EXCEEDS ONE HUNDRED
5 KILOVOLTS AND IS OWNED AND OPERATED BY AN INVESTOR-OWNED
6 ELECTRIC UTILITY.

7 (2) A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
8 ISSUED BY THE COMMISSION PURSUANT TO THIS ARTICLE 5 DOES NOT
9 CONFER THE POWER OF EMINENT DOMAIN UPON AN INVESTOR-OWNED
10 ELECTRIC UTILITY UNLESS AND UNTIL:

11 (a) ALL LOCAL GOVERNMENT LAND USE PERMITS AND APPROVALS
12 REQUIRED FOR THE TRANSMISSION INFRASTRUCTURE HAVE BEEN ISSUED
13 BY THE RELEVANT ENTITIES OF THE LOCAL GOVERNMENT WHERE THE
14 TRANSMISSION INFRASTRUCTURE WILL BE LOCATED; AND

15 (b) ANY TAKING OR DAMAGING OF PRIVATE PROPERTY FOR THE
16 TRANSMISSION INFRASTRUCTURE IS CONDUCTED CONSISTENT WITH
17 SECTION 15 OF ARTICLE II OF THE STATE CONSTITUTION TO ENSURE JUST
18 COMPENSATION AND PROHIBIT SPECULATIVE TAKING OF PRIVATE
19 PROPERTY.

20 (3) (a) AN INVESTOR-OWNED ELECTRIC UTILITY THAT HAS
21 RECEIVED A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FROM
22 THE COMMISSION FOR TRANSMISSION INFRASTRUCTURE SHALL NOT
23 INITIATE CONDEMNATION PROCEEDINGS FOR ANY PROPERTY RELATED TO
24 THE INFRASTRUCTURE UNLESS AND UNTIL THE INVESTOR-OWNED ELECTRIC
25 UTILITY OBTAINS:

26 (I) ALL LOCAL GOVERNMENT LAND USE PERMITS AND APPROVALS
27 ISSUED BY THE LOCAL GOVERNMENT WHERE THE TRANSMISSION

1 INFRASTRUCTURE WILL BE LOCATED; AND

2 (II) CONFIRMATION OF THE FINAL APPROVED PROJECT DESIGN
3 FROM THE LOCAL GOVERNMENT SUCH THAT THE SPECIFIC PROPERTY
4 REQUIRED FOR THE TRANSMISSION INFRASTRUCTURE IS IDENTIFIED AND
5 ANY TAKING OR DAMAGING OF PRIVATE PROPERTY REQUIRED FOR THE
6 TRANSMISSION INFRASTRUCTURE IS CONDUCTED CONSISTENT WITH
7 SECTION 15 OF ARTICLE II OF THE STATE CONSTITUTION.

8 (b) IF THE TRANSMISSION INFRASTRUCTURE WILL BE LOCATED
9 WITHIN THE JURISDICTION OF MULTIPLE LOCAL GOVERNMENTS, THE
10 INVESTOR-OWNED ELECTRIC UTILITY SHALL MEET THE REQUIREMENTS OF
11 SUBSECTION (2) OF THIS SECTION AND THIS SUBSECTION (3) FOR EACH
12 SPECIFIC LOCAL GOVERNMENT JURISDICTION WHERE THE TRANSMISSION
13 INFRASTRUCTURE WILL BE LOCATED BEFORE INITIATING A CONDEMNATION
14 PROCEEDING RELATED TO THE TRANSMISSION INFRASTRUCTURE WITHIN A
15 SPECIFIC LOCAL GOVERNMENT JURISDICTION THAT HAS NOT YET APPROVED
16 THE TRANSMISSION INFRASTRUCTURE.

17 (4) THE ISSUANCE OF A CERTIFICATE OF PUBLIC CONVENIENCE AND
18 NECESSITY BY THE COMMISSION PURSUANT TO THIS ARTICLE 5 DOES NOT
19 RELIEVE AN INVESTOR-OWNED ELECTRIC UTILITY FROM THE UTILITY'S
20 OBLIGATION TO OBTAIN ALL NECESSARY LOCAL GOVERNMENT LAND USE
21 PERMITS AND APPROVALS PRIOR TO EXERCISING THE UTILITY'S EMINENT
22 DOMAIN AUTHORITY.

23 (5) THIS SECTION SHALL NOT IMPACT OR DELAY EXISTING
24 APPLICATION REVIEW PROCESSES OR TIMELINES ESTABLISHED BY THE
25 COMMISSION OR A RELEVANT LOCAL GOVERNMENT.

26 **SECTION 3.** In Colorado Revised Statutes, 29-20-108, **add** (8)
27 as follows:

1 **29-20-108. Local government regulation - location,**
2 **construction, or improvement of major electrical or natural gas**
3 **facilities - powerline trail notification - expedited review for certain**
4 **transmission line projects - transmission infrastructure exception -**
5 **legislative declaration - definitions.**

6 (8) (a) THIS SECTION DOES NOT APPLY TO LOCAL GOVERNMENT
7 LAND USE PERMITS AND APPROVALS REQUIRED FOR INVESTOR-OWNED
8 ELECTRIC UTILITIES' TRANSMISSION INFRASTRUCTURE, AS GOVERNED BY
9 SECTION 40-5-101.3.

10 (b) AS USED IN THIS SUBSECTION (8):

11 (I) "INVESTOR-OWNED ELECTRIC UTILITY" HAS THE MEANING SET
12 FORTH IN SECTION 40-5-101.3 (1)(a).

13 (II) "TRANSMISSION INFRASTRUCTURE" HAS THE MEANING SET
14 FORTH IN SECTION 40-5-101.3 (1)(c).

15 **SECTION 4. Act subject to petition - effective date -**
16 **applicability.** (1) This act takes effect January 1, 2027; except that, if a
17 referendum petition is filed pursuant to section 1 (3) of article V of the
18 state constitution against this act or an item, section, or part of this act
19 within the ninety-day period after final adjournment of the general
20 assembly, then the act, item, section, or part will not take effect unless
21 approved by the people at the general election to be held in November
22 2026 and, in such case, will take effect January 1, 2027, or on the date of
23 the official declaration of the vote thereon by the governor, whichever is
24 later.

25 (2) This act applies to condemnation proceedings initiated on or
26 after the applicable effective date of this act.