

HOUSE BILL 821

Introduced by Toole, et al.

2/13	Introduced
2/13	Referred to Judiciary
2/14	First Reading
2/20	Hearing
2/22	Committee Report--Bill Passed as Amended
2/26	2nd Reading Do Pass as Amended Motion Failed

1 HOUSE BILL NO. 821
 2 INTRODUCED BY John
 3 Becker Lana

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REMOVE MINES, MILLS,
 5 AND SMELTERS FOR THE REDUCTION OF ORES FROM THE EMINENT
 6 DOMAIN LAWS AND THE DEFINITION OF PUBLIC USES; AMENDING
 7 SECTIONS 70-30-102 AND 70-30-104, MCA; REPEALING SECTIONS
 8 82-2-201, 82-2-202, 82-2-203, 82-2-204, 82-2-205, 82-2-206,
 9 82-2-207, 82-2-208, 82-2-209, 82-2-210, 82-2-211, 82-2-212,
 10 82-2-221, 82-2-222, 82-2-223, AND 82-2-224, MCA; AND
 11 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

12
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 **Section 1.** Section 70-30-102, MCA, is amended to read:

15 "70-30-102. Public uses enumerated. Subject to the
 16 provisions of this chapter, the right of eminent domain may
 17 be exercised in behalf of the following public uses:

- 18 (1) all public uses authorized by the government of the
- 19 United States;
- 20 (2) public buildings and grounds for the use of the
- 21 state and all other public uses authorized by the
- 22 legislature of the state;
- 23 (3) public buildings and grounds for the use of any
- 24 county, city or town, or school district; canals, aqueducts,
- 25 flumes, ditches, or pipes conducting water, heat, or gas for

1 the use of the inhabitants of any county, city, or town;
 2 raising the banks of streams, removing obstructions
 3 therefrom, and widening, deepening, or straightening their
 4 channels; roads, streets, and alleys and all other public
 5 uses for the benefit of any county, city, or town or the
 6 inhabitants thereof, which may be authorized by the
 7 legislature; but the mode of apportioning and collecting the
 8 costs of such improvements shall be such as may be provided
 9 in the statutes or ordinances by which the same may be
 10 authorized;

11 (4) wharves, docks, piers, chutes, booms, ferries,
 12 bridges, of all kinds, private roads, plank and turnpike
 13 roads, railroads, canals, ditches, flumes, aqueducts, and
 14 pipes for public transportation, ~~supplying mines, mills, and~~
 15 ~~smelters for the reduction of ores~~ and farming neighborhoods
 16 with water and drainage and reclaiming lands and for
 17 floating logs and lumber on streams not navigable and sites
 18 for reservoirs necessary for collecting and storing water.
 19 However, such reservoir sites must possess a public use
 20 demonstrable to the district court as the highest and best
 21 use of the land.

22 (5) ~~roads, tunnels, ditches, flumes, pipes, and dumping~~
 23 ~~places for working mines, mills, or smelters for the~~
 24 ~~reduction of ores, also outlets, natural or otherwise, for~~
 25 ~~the flow, deposit, or conduct of tailings or refuse matter~~



1 from mines, mills, and smelters for the reduction of ores;
 2 also an occupancy in common by the owners or the possessors
 3 of different mines of any place for the flow, deposit, or
 4 conduct of tailings or refuse matter from their several
 5 mines, mills, or smelters for reduction of ores and sites
 6 for reservoirs necessary for collecting and storing water.
 7 However, such reservoir sites must possess a public use
 8 demonstrable to the district court as the highest and best
 9 use of the land:

10 †6†(5) private roads leading from highways to
 11 residences or farms;

12 †7†(6) telephone or electric light lines;

13 †8†(7) telegraph lines;

14 †9†(8) sewerage of any city, county, or town or any
 15 subdivision thereof, whether incorporated or unincorporated,
 16 or of any settlement consisting of not less than 10 families
 17 or of any public buildings belonging to the state or to any
 18 college or university;

19 †10†(9) tramway lines;

20 †11†(10) electric power lines;

21 †12†(11) logging railways;

22 †13†(12) temporary logging roads and banking grounds for
 23 the transportation of logs and timber products to public
 24 streams, lakes, mills, railroads, or highways for such time
 25 as the court or judge may determine; provided, the grounds

1 of state institutions be excepted;

2 †14†(13) underground reservoirs suitable for storage of
 3 natural gas;

4 †15† to mine and extract ores, metals, or minerals owned
 5 by the plaintiff located beneath or upon the surface of
 6 property where the title to said surface vests in others.
 7 However, the use of the surface for strip mining or open pit
 8 mining of coal (if any mining method or process in which
 9 the strata or overburden is removed or displaced in order to
 10 extract the coal) is not a public use, and eminent domain
 11 may not be exercised for this purpose;

12 †16†(14) to restore and reclaim lands strip or
 13 underground-mined for coal and not reclaimed in accordance
 14 with Title 82, chapter 4, part 2, and to abate or control
 15 adverse affects of strip or underground mining on those
 16 lands."

17 **Section 2.** Section 70-30-104, MCA, is amended to read:

18 "70-30-104. What estates and rights in land may be
 19 taken. The following is a classification of the estates and
 20 rights in lands subject to be taken for the public use:

21 (1) such estate or rights as may be necessary up to and
 22 including a fee simple when taken for public buildings or
 23 grounds or for permanent buildings or for an outlet for a
 24 flow or a place for the deposit of debris or tailings of a
 25 mine or for the mining and extracting of ores, metals, or

1 ~~minerals when the same are owned by the plaintiff but~~
 2 ~~located beneath or upon the surface of property where the~~
 3 ~~title to said surface vests in others~~ or for the underground
 4 storage of natural gas by a natural gas public utility as
 5 defined in 82-10-301. When the appropriation is for the
 6 underground storage of natural gas, all of the right, title,
 7 interest, and estate in the real property and in the suband
 8 stratum, formation, or reservoir so appropriated shall be
 9 determinable and for all purposes terminate upon abandonment
 10 or upon cessation for the period of 1 year of the use for
 11 which the same was appropriated, and thereupon the ownership
 12 of the residue of natural gas therein remaining shall
 13 likewise vest in the then owners of such reservoir space.

14 (2) such estate or rights in the surface as are
 15 necessary for a reservoir or dam and for the permanent
 16 flooding that results, up to the edge of the maximum pool of
 17 the reservoir;

18 (3) an easement, leasehold, or other interest, for so
 19 long as the interest is necessary for the purpose described
 20 in the complaint, or fee simple when taken for any other
 21 use;

22 (4) the right of entry upon and occupation of land and
 23 the right to take therefrom such earth, gravel, stones,
 24 trees, and timber as may be necessary for some public use."

25 NEW SECTION. **Section 3. Repealer.** Sections 82-2-201,

1 82-2-202, 82-2-203, 82-2-204, 82-2-205, 82-2-206, 82-2-207,
 2 82-2-208, 82-2-209, 82-2-210, 82-2-211, 82-2-212, 82-2-221,
 3 82-2-222, 82-2-223, and 82-2-224, MCA, are repealed.

4 NEW SECTION. **Section 4. Effective date.** [This act] is
 5 effective on passage and approval.

-End-

HOUSE BILL NO. 821

INTRODUCED BY TOOLE, COBB, BECKER, WANZENRIED, LARSON

A BILL FOR AN ACT ENTITLED: "AN ACT TO PARTIALLY REMOVE MINES, MILLS, AND SMELTERS FOR THE REDUCTION OF ORES FROM THE EMINENT DOMAIN LAWS AND THE DEFINITION OF PUBLIC USES; AMENDING SECTIONS 70-30-102 AND 70-30-104, MCA; REPEALING SECTIONS 82-2-201, 82-2-202, 82-2-203, 82-2-204, 82-2-205, 82-2-206, 82-2-207, 82-2-208, 82-2-209, 82-2-210, 82-2-211, 82-2-212, 82-2-221, 82-2-222, 82-2-223, AND 82-2-224, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 70-30-102, MCA, is amended to read:

"70-30-102. Public uses enumerated. Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

- (1) all public uses authorized by the government of the United States;
- (2) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;
- (3) public buildings and grounds for the use of any county, city or town, or school district; canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for

the use of the inhabitants of any county, city, or town; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys and all other public uses for the benefit of any county, city, or town or the inhabitants thereof, which may be authorized by the legislature; but the mode of apportioning and collecting the costs of such improvements shall be such as may be provided in the statutes or ordinances by which the same may be authorized;

(4) wharves, docks, piers, chutes, booms, ferries, bridges, of all kinds, private roads, plank and turnpike roads, railroads, canals, ditches, flumes, aqueducts, and pipes for public transportation, ~~supplying-mines, mills, and smelters-for-the-reduction-of-ores~~ and farming neighborhoods with water and drainage and reclaiming lands and for floating logs and lumber on streams not navigable and sites for reservoirs necessary for collecting and storing water. However, such reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

~~(5) roads, tunnels, ditches, flumes, pipes, and dumping places for working mines, mills, or smelters for the reduction of ores; also outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter~~



1 from mines, mills, and smelters for the reduction of ores;
 2 also an occupancy in common by the owners or the possessors
 3 of different mines of any place for the flow, deposit, or
 4 conduct of tailings or refuse matter from their several
 5 mines, mills, or smelters for reduction of ores and sites
 6 for reservoirs necessary for collecting and storing water.
 7 However, such reservoir sites must possess a public use
 8 demonstrable to the district court as the highest and best
 9 use of the land:

10 {6}(5) private roads leading from highways to
 11 residences or farms;

12 {7}(6) telephone or electric light lines;

13 {8}(7) telegraph lines;

14 {9}(8) sewerage of any city, county, or town or any
 15 subdivision thereof, whether incorporated or unincorporated,
 16 or of any settlement consisting of not less than 10 families
 17 or of any public buildings belonging to the state or to any
 18 college or university;

19 {10}(9) tramway lines;

20 {11}(10) electric power lines;

21 {12}(11) logging railways;

22 {13}(12) temporary logging roads and banking grounds for
 23 the transportation of logs and timber products to public
 24 streams, lakes, mills, railroads, or highways for such time
 25 as the court or judge may determine; provided, the grounds

1 of state institutions be excepted;

2 {14}(13) underground reservoirs suitable for storage of
 3 natural gas;

4 {15} to mine and extract ores, metals, or minerals owned
 5 by the plaintiff located beneath or upon the surface of
 6 property where the title to said surface vests in others.
 7 However, the use of the surface for strip mining or open-pit
 8 mining of coal (i.e., any mining method or process in which
 9 the strata or overburden is removed or displaced in order to
 10 extract the coal) is not a public use, and eminent domain
 11 may not be exercised for this purpose;

12 {16}(14) to restore and reclaim lands strip or
 13 underground-mined for coal and not reclaimed in accordance
 14 with Title 82, chapter 4, part 2, and to abate or control
 15 adverse affects of strip or underground mining on those
 16 lands;

17 {15} FOR AN OPERATING OR PROPOSED MINE, MILL, OR
 18 SMELTER, LAND NEEDED FOR COMPLIANCE WITH STATE AND FEDERAL
 19 LAWS OR REGULATIONS PROMULGATED FOR THE PROTECTION OF THE
 20 ENVIRONMENT IF THE LAND ON WHICH THE MINE, MILL, OR SMELTER
 21 IS SITUATED HAS NO SUITABLE LOCATION THAT CAN BE USED FOR
 22 SUCH COMPLIANCE."

23 **Section 2.** Section 70-30-104, MCA, is amended to read:

24 "70-30-104. What estates and rights in land may be
 25 taken. The following is a classification of the estates and

1 rights in lands subject to be taken for the public use:

2 (1) such estate or rights as may be necessary up to and
3 including a fee simple when taken for public buildings or
4 grounds or for permanent buildings ~~or-for-an-outlet-for-a~~
5 ~~flow-or-a-piace-for-the-deposit-of-debris-or-tailings--of--a~~
6 ~~mine--or--for--the-mining-and-extracting-of-ores,-metals,-or~~
7 ~~minerals-when-the--same--are--owned--by--the--plaintiff--but~~
8 ~~located--beneath--or--upon-the-surface-of-property-where-the~~
9 ~~title-to-said-surface-vests-in-others~~ or for the underground
10 storage of natural gas by a natural gas public utility as
11 defined in 82-10-301. When the appropriation is for the
12 underground storage of natural gas, all of the right, title,
13 interest, and estate in the real property and in the subsand
14 stratum, formation, or reservoir so appropriated shall be
15 determinable and for all purposes terminate upon abandonment
16 or upon cessation for the period of 1 year of the use for
17 which the same was appropriated, and thereupon the ownership
18 of the residue of natural gas therein remaining shall
19 likewise vest in the then owners of such reservoir space.

20 (2) such estate or rights in the surface as are
21 necessary for a reservoir or dam and for the permanent
22 flooding that results, up to the edge of the maximum pool of
23 the reservoir;

24 (3) an easement, leasehold, or other interest, for so
25 long as the interest is necessary for the purpose described

1 in the complaint, or fee simple when taken for any other
2 use;

3 (4) the right of entry upon and occupation of land and
4 the right to take therefrom such earth, gravel, stones,
5 trees, and timber as may be necessary for some public use."

6 NEW SECTION. **Section 3. Repealer.** Sections 82-2-201,
7 82-2-202, 82-2-203, 82-2-204, 82-2-205, 82-2-206, 82-2-207,
8 82-2-208, 82-2-209, 82-2-210, 82-2-211, 82-2-212, 82-2-221,
9 82-2-222, 82-2-223, and 82-2-224, MCA, are repealed.

10 NEW SECTION. **Section 4. Effective date.** [This act] is
11 effective on passage and approval.

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