

1 *House* BILL NO. *82*
 2 INTRODUCED BY *Daniel Nelson Harper*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CONFORM THE EMINENT
 5 DOMAIN POWER GRANTED TO REGULATED PUBLIC UTILITIES WITH THE
 6 POWER GRANTED THE DEPARTMENT OF HIGHWAYS; REPEALING VARIOUS
 7 GRANTS OF EMINENT DOMAIN POWER TO PERSONS NOT PUBLIC
 8 UTILITIES, COOPERATIVES, OR PUBLIC AGENCIES; PROVIDING FOR
 9 JUDICIAL REVIEW OF A PRESUMPTION OF NECESSITY; AMENDING
 10 SECTIONS 15-2204, 93-9902, AND 93-9910, R.C.M. 1947; AND
 11 REPEALING SECTIONS 50-801 THROUGH 50-816, R.C.M. 1947.

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

14 Section 1. Section 15-2204, R.C.M. 1947, is amended to
 15 read as follows:

16 "15-2204. General powers. Each corporation shall have
 17 power:

18 (a) To have perpetual existence by its corporate name
 19 unless a limited period of duration is stated in its
 20 articles of incorporation.

21 (b) To sue and be sued, complain and defend, in its
 22 corporate name.

23 (c) To have a corporate seal which may be altered at
 24 pleasure, and to use the same by causing it, or a facsimile
 25 thereof, to be impressed or affixed or in any other manner

1 reproduced.

2 (d) To purchase, take, receive, lease, or otherwise
 3 acquire, own, hold, improve, use and otherwise deal in and
 4 with, real or personal property, or any interest therein,
 5 wherever situated, ~~and to acquire property by proceedings~~
 6 ~~in eminent domain~~

7 (e) To sell, convey, mortgage, pledge, lease, exchange,
 8 transfer and otherwise dispose of all or any part of its
 9 property and assets.

10 (f) To lend money to, to guarantee the obligations of
 11 and to otherwise assist its employees and, upon the
 12 affirmative vote of the holders of a majority of the
 13 outstanding shares of the corporation which are entitled to
 14 vote for directors, to lend money to, to guarantee the
 15 obligations of and to otherwise assist its directors and
 16 officers, but no loans shall be made by a corporation
 17 secured by its shares.

18 (g) To purchase, take, receive, subscribe for, or
 19 otherwise acquire, own, hold, vote, use, employ, sell,
 20 mortgage, lend, pledge, or otherwise dispose of, and
 21 otherwise use and deal in and with, shares or other
 22 interests in, or obligations of, other domestic or foreign
 23 corporations, associations, partnerships, joint ventures,
 24 co-operatives or individuals, or direct or indirect
 25 obligations of the United States or of any other government,

1 state, territory, governmental district or municipality or
2 of any instrumentality thereof.

3 (h) To make contracts and guarantees and incur
4 liabilities, borrow money at such rates of interest as the
5 corporation may determine, issue its notes, bonds, and other
6 obligations, and secure any of its obligations by mortgage
7 or pledge of all or any of its property, franchises and
8 income.

9 (i) To lend money for its corporate purposes, invest
10 and reinvest its funds, and take and hold real and personal
11 property as security for the payment of funds so loaned or
12 invested.

13 (j) To conduct its business, carry on its operations,
14 and have offices and exercise the powers granted by this act
15 in any state, territory, district, or possession of the
16 United States, or in any foreign country.

17 (k) To elect or appoint officers and agents of the
18 corporation, and define their duties and fix their
19 compensation.

20 (l) To make and alter bylaws, not inconsistent with its
21 articles of incorporation or with the laws of this state,
22 for the administration and regulation of the affairs of the
23 corporation.

24 (m) To make donations for the public welfare or for
25 charitable, religious, scientific or educational purposes,

1 and in time of war to make donations in aid of war
2 activities.

3 (n) In time of war to transact any lawful business in
4 aid of the United States in the prosecution of the war.

5 (o) To indemnify any director or officer or former
6 director or officer of the corporation, or any person who
7 may have served at its request as a director or officer of
8 another corporation in which it owns shares of capital stock
9 or of which it is a creditor, against claims, liabilities,
10 expenses and costs necessarily incurred by him in connection
11 with the defense, compromise or settlement of any action,
12 suit or proceeding, civil or criminal, in which he is made a
13 party by reason of being or having been such director or
14 officer, except in relation to matters as to which he shall
15 be adjudged in such action, suit or proceeding to be liable
16 for negligence or misconduct in the performance of duty to
17 the corporation, and to make any other indemnification that
18 shall be authorized by the articles of incorporation or by
19 any bylaw or resolution adopted by the shareholders after
20 notice.

21 (p) To pay pensions and retirement benefits and
22 establish pension plans, pension trusts, profit-sharing
23 plans, stock bonus plans, stock option plans, insurance
24 plans, and incentive plans for any or all of its directors,
25 officers and employees.

1 (q) To cease its corporate activities and surrender its
2 corporate franchise.

3 (r) To have and exercise all powers necessary or
4 convenient to effect any or all of the purposes for which
5 the corporation is organized."

6 Section 2. Section 93-9902, R.C.M. 1947, is amended to
7 read as follows:

8 "93-9902. What are public uses. Subject to the
9 provisions of this chapter, the right of eminent domain may
10 be exercised in behalf of the following public uses:

11 1. All public uses authorized by the government of the
12 United States.

13 2. Public buildings and grounds for the use of the
14 state, and all other public uses authorized by the
15 ~~legislative assembly of the state, legislature.~~

16 3. Public buildings and grounds ~~for the use of any~~
17 ~~county, city, or town, or school districts, canals,~~
18 ~~aqueducts, flumes, ditches, or pipes conducting water, heat,~~
19 ~~or gas for the use of the inhabitants of any county, city,~~
20 ~~or town, raising the banks of streams, removing obstructions~~
21 ~~therefrom, and widening, deepening, or straightening their~~
22 ~~channels, roads, streets, and alleys, and all other public~~
23 ~~uses for the benefit of any county, city, or town, or school~~
24 ~~district, or the inhabitants thereof, which may be~~
25 ~~authorized by the legislative assembly, legislature; but the~~

1 mode of apportioning and collecting the costs of such
2 improvements shall be such as may be provided in the
3 statutes or ordinances by which the same may be authorized.

4 4. ~~Wharves, docks, piers, chutes, booms, ferries,~~
5 ~~bridges, of all kinds, private roads, plank and turnpike~~
6 ~~roads, railroads, canals, ditches, flumes, aqueducts, and~~
7 ~~pipes for public transportation, supplying mines, mills, and~~
8 ~~smelters for the reduction of ores and farming neighborhoods~~
9 ~~with water, and drainage and reclaiming lands, and for~~
10 ~~floating logs and lumber on streams not navigable, and sites~~
11 Sites for reservoirs, necessary for collecting and storing
12 water. Provided, however, that such reservoir sites must
13 possess a public use demonstrable to the district court as
14 the highest and best use of the land.

15 5. ~~Roads, tunnels, ditches, flumes, pipes, and dumping~~
16 ~~places for working mines, mills, or smelters for the~~
17 ~~reduction of ores, also outlets, natural or otherwise, for~~
18 ~~the flow, deposit, or conduct of tailings or refuse matter~~
19 ~~from mines, mills, and smelters for the reduction of ores,~~
20 ~~also an occupancy in common by the owners or the possessors~~
21 ~~of different mines of any place for the flow, deposit, or~~
22 ~~conduct of tailings or refuse matter from their several~~
23 ~~mines, mills, or smelters for reduction of ores, and sites~~
24 ~~for reservoirs necessary for collecting and storing water.~~
25 ~~Provided, however, that such reservoir sites must possess a~~

1 ~~public-use-demonstrable-to-the-district-court-as-the-highest~~
 2 ~~and-best-use-of-the-land.~~

3 ~~6. Private roads leading from highways to residences~~
 4 ~~or farms.~~

5 ~~7. Telephone or electric light lines.~~

6 ~~8. Telegraph lines.~~

7 ~~9. 5. Sewerage of any city, county, or town, or any~~
 8 ~~subdivision thereof, whether incorporated or unincorporated,~~
 9 ~~or of any settlement consisting of not less than ten (10)~~
 10 ~~families, or of any public buildings belonging to the state,~~
 11 ~~or to any college or university.~~

12 ~~10. Tramway lines.~~

13 ~~11. Electric power lines.~~

14 ~~12. Logging railways.~~

15 ~~13. Temporary logging roads and banking grounds for~~
 16 ~~the transportation of logs and lumber products to public~~
 17 ~~streams, lakes, mills, railroads, or highways, for such time~~
 18 ~~as the court or judge may determine, provided, the grounds~~
 19 ~~of state institutions be excepted.~~

20 6. Transportation, communications, or energy
 21 distribution facilities furnished to the public by a
 22 cooperative or by a utility corporation whose rates are
 23 regulated by the public service commission, following a
 24 hearing and order under section 70-305. The order creates a
 25 disputable presumption:

1 (a) of the public necessity of the proposed facility;
 2 (b) that the taking of the interest sought is
 3 necessary therefor; and

4 (c) that the proposed facility is planned or located
 5 in a manner which will be most compatible with the greatest
 6 public good and the least private injury.

7 ~~14. 7. Underground reservoirs suitable for storage of~~
 8 ~~natural gas."~~

9 ~~15. To mine and extract ores, metals or minerals owned~~
 10 ~~by the plaintiff located beneath or upon the surface of~~
 11 ~~property where the title to said surface vests in others,~~
 12 ~~provided, however, the use of the surface for strip mining~~
 13 ~~or open-pit mining of coal (i.e., any mining method or~~
 14 ~~process in which the strata or overburden is removed or~~
 15 ~~displaced in order to extract the coal) is not a public use~~
 16 ~~and eminent domain may not be exercised for this purpose.~~

17 Section 3. Section 93-9910, R.C.M. 1947, is amended to
 18 read as follows:

19 "93-9910. Who may defend--answer of defendant. All
 20 persons named in the complaint, in occupation of, or
 21 claiming an interest in, any of the property described in
 22 the complaint, or in the amount to be awarded for the taking
 23 thereof, though not named, may appear. The answer of each
 24 appearing defendant must be filed and served upon the
 25 plaintiff, or upon any attorney for plaintiff, within a

1 period of fifteen (15) days after the service of summons and
 2 complaint. The answer of each appearing defendant must
 3 contain a specific allegation as to the total amount which
 4 such defendant claims is reasonable and just for the taking
 5 of such defendant's lands or other real property or interest
 6 therein. If the answer of a defendant disputes a
 7 presumption created under sections 32-3904 or 70-305, the
 8 plaintiff shall file the record upon which the findings and
 9 order are based."

10 Section 4. There is a new R.C.M. section numbered
 11 70-305 that reads as follows:

12 Section 70-305. Procedure for obtaining eminent domain
 13 authority. (1) A corporation or other person furnishing
 14 railroad, telecommunications, electricity, natural gas or
 15 pipeline services, subject to rate regulation by the public
 16 services commission, or a cooperative furnishing any of
 17 these services, may acquire real property through eminent
 18 domain proceedings for a right-of-way when authorized as
 19 provided under this section and section 93-9911. The party
 20 seeking to acquire the property must obtain an order from
 21 the commission, or if the proposed use is regulated under
 22 the Utility Siting Act, from the board of natural resources
 23 and conservation.

24 (2) An order approving eminent domain proceedings
 25 under this section shall include findings, based upon a

1 record, that:

2 (a) public interest and necessity require the
 3 construction or completion by the applicant of the proposed
 4 facility for a public purpose recognized by statute;

5 (b) the interest described in the order and sought to
 6 be condemned is necessary for the facility; and

7 (c) the facility is planned and located in a manner
 8 which will be compatible with the greatest public good and
 9 the least private injury.

10 (3) The record supporting the findings shall be made
 11 by the hearing provided under section 70-809, if the
 12 proposed use is regulated under the Utility Siting Act, or
 13 by a substantially equivalent hearing conducted by the
 14 public service commission in other cases. The public
 15 service commission may make rules for the conduct of such
 16 hearings.

17 Section 5. Repealer. Sections 50-801 through 50-816,
 18 R.C.M. 1947, are repealed.

-End-

Approved by Committee
on Judiciary

HOUSE BILL NO. 82

INTRODUCED BY DRISCOLL, MELOY, HARPER

A BILL FOR AN ACT ENTITLED: "AN ACT TO CONFORM THE EMINENT
DOMAIN POWER GRANTED TO REGULATED PUBLIC UTILITIES WITH THE
POWER GRANTED THE DEPARTMENT OF HIGHWAYS; REPEALING VARIOUS
GRANTS OF EMINENT DOMAIN POWER TO PERSONS NOT PUBLIC
UTILITIES, COOPERATIVES, OR PUBLIC AGENCIES; PROVIDING FOR
JUDICIAL REVIEW OF A PRESUMPTION OF NECESSITY; AMENDING
SECTIONS 15-2204, 93-9902, AND 93-9910, R.C.M. 1947; AND
REPEALING SECTIONS 50-801 THROUGH 50-816, R.C.M. 1947.

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

Section 1. Section 15-2204, R.C.M. 1947, is amended to
read as follows:

"15-2204. General powers. Each corporation shall have
power:

(a) To have perpetual existence by its corporate name
unless a limited period of duration is stated in its
articles of incorporation.

(b) To sue and be sued, complain and defend, in its
corporate name.

(c) To have a corporate seal which may be altered at
pleasure, and to use the same by causing it, or a facsimile
thereof, to be impressed or affixed or in any other manner

reproduced.

(d) To purchase, take, receive, lease, or otherwise
acquire, own, hold, improve, use and otherwise deal in and
with, real or personal property, or any interest therein,
wherever situated, ~~and to acquire property by proceedings
in eminent domain~~ AND TO ACQUIRE PROPERTY BY PROCEEDINGS IN
EMINENT DOMAIN, WHERE SUCH POWER IS GRANTED BY LAW.

(e) To sell, convey, mortgage, pledge, lease,
exchange, transfer and otherwise dispose of all or any part
of its property and assets.

(f) To lend money to, to guarantee the obligations of
and to otherwise assist its employees and, upon the
affirmative vote of the holders of a majority of the
outstanding shares of the corporation which are entitled to
vote for directors, to lend money to, to guarantee the
obligations of and to otherwise assist its directors and
officers, but no loans shall be made by a corporation
secured by its shares.

(g) To purchase, take, receive, subscribe for, or
otherwise acquire, own, hold, vote, use, employ, sell,
mortgage, lend, pledge, or otherwise dispose of, and
otherwise use and deal in and with, shares or other
interests in, or obligations of, other domestic or foreign
corporations, associations, partnerships, joint ventures,
co-operatives or individuals, or direct or indirect

1 obligations of the United States or of any other government,
2 state, territory, governmental district or municipality or
3 of any instrumentality thereof.

4 (h) To make contracts and guarantees and incur
5 liabilities, borrow money at such rates of interest as the
6 corporation may determine, issue its notes, bonds, and other
7 obligations, and secure any of its obligations by mortgage
8 or pledge of all or any of its property, franchises and
9 income.

10 (i) To lend money for its corporate purposes, invest
11 and reinvest its funds, and take and hold real and personal
12 property as security for the payment of funds so loaned or
13 invested.

14 (j) To conduct its business, carry on its operations,
15 and have offices and exercise the powers granted by this act
16 in any state, territory, district, or possession of the
17 United States, or in any foreign country.

18 (k) To elect or appoint officers and agents of the
19 corporation, and define their duties and fix their
20 compensation.

21 (l) To make and alter bylaws, not inconsistent with
22 its articles of incorporation or with the laws of this
23 state, for the administration and regulation of the affairs
24 of the corporation.

25 (m) To make donations for the public welfare or for

1 charitable, religious, scientific or educational purposes,
2 and in time of war to make donations in aid of war
3 activities.

4 (n) In time of war to transact any lawful business in
5 aid of the United States in the prosecution of the war.

6 (o) To indemnify any director or officer or former
7 director or officer of the corporation, or any person who
8 may have served at its request as a director or officer of
9 another corporation in which it owns shares of capital stock
10 or of which it is a creditor, against claims, liabilities,
11 expenses and costs necessarily incurred by him in connection
12 with the defense, compromise or settlement of any action,
13 suit or proceeding, civil or criminal, in which he is made a
14 party by reason of being or having been such director or
15 officer, except in relation to matters as to which he shall
16 be adjudged in such action, suit or proceeding to be liable
17 for negligence or misconduct in the performance of duty to
18 the corporation, and to make any other indemnification that
19 shall be authorized by the articles of incorporation or by
20 any bylaw or resolution adopted by the shareholders after
21 notice.

22 (p) To pay pensions and retirement benefits and
23 establish pension plans, pension trusts, profit-sharing
24 plans, stock bonus plans, stock option plans, insurance
25 plans, and incentive plans for any or all of its directors,

1 officers and employees.

2 (q) To cease its corporate activities and surrender
3 its corporate franchise.

4 (r) To have and exercise all powers necessary or
5 convenient to effect any or all of the purposes for which
6 the corporation is organized."

7 Section 2. Section 93-9902, R.C.M. 1947, is amended to
8 read as follows:

9 "93-9902. What are public uses. Subject to the
10 provisions of this chapter, the right of eminent domain may
11 be exercised in behalf of the following public uses:

12 1. All public uses authorized by the government of the
13 United States.

14 2. Public buildings and grounds for the use of the
15 state, and all other public uses authorized by the
16 ~~legislative-assembly-of-the-state~~ legislature.

17 3. Public buildings and grounds ~~for-the-use-of-any~~
18 ~~county--city--or--town--or--school--districts--canals~~
19 ~~aqueducts--flumes--ditches--or--pipes--conducting--water--heat~~
20 ~~or--gas--for--the--use--of--the--inhabitants--of--any--county--city~~
21 ~~or--town--raising--the--banks--of--streams--removing--obstructions~~
22 ~~therefrom--and--widening--deepening--or--straightening--their~~
23 ~~channels--roads--streets--and--alleys~~ and all other public
24 uses for the benefit of any county, city, or town, or school
25 district, or the inhabitants thereof, which may be

1 authorized by the ~~legislative-assembly~~ legislature; but the
2 mode of apportioning and collecting the costs of such
3 improvements shall be such as may be provided in the
4 statutes or ordinances by which the same may be authorized.

5 4. ~~Wharves--docks--piers--chutes--booms--ferries~~
6 ~~bridges--of--all--kinds--private--roads--plank--and--turnpike~~
7 ~~roads--railroads--canals--ditches--flumes--aqueducts--and~~
8 ~~pipes--for--public--transportation--supplying--mines--mills--and~~
9 ~~smelters--for--the--reduction--of--ores--and--farming--neighborhoods~~
10 ~~with--water--and--drainage--and--reclaiming--lands--and--for~~
11 ~~floating--logs--and--lumber--on--streams--not--navigable--and--sites~~
12 Sites for reservoirs, ~~necessary--for--collecting--and--storing~~
13 ~~water--Provided--however--that--such--reservoir--sites--must~~
14 ~~possess--a--public--use--demonstrable--to--the--district--court--as~~
15 ~~the--highest--and--best--use--of--the--land~~ NECESSARY FOR
16 AGRICULTURE AND PUBLIC WATER SUPPLIES.

17 5. ~~Roads--tunnels--ditches--flumes--pipes--and--dumping~~
18 ~~places--for--working--mines--mills--or--smelters--for--the~~
19 ~~reduction--of--ores--also--outlets--natural--or--otherwise--for~~
20 ~~the--flow--deposit--or--conduct--of--tailings--or--refuse--matter~~
21 ~~from--mines--mills--and--smelters--for--the--reduction--of--ores~~
22 ~~also--an--occupancy--in--common--by--the--owners--or--the--possessors~~
23 ~~of--different--mines--of--any--place--for--the--flow--deposit--or~~
24 ~~conduct--of--tailings--or--refuse--matter--from--their--several~~
25 ~~mines--mills--or--smelters--for--reduction--of--ores--and--sites~~

1 ~~for reservoirs necessary for collecting and storing water.~~
2 ~~Provided, however, that such reservoir sites must possess a~~
3 ~~public use demonstrable to the district court as the highest~~
4 ~~and best use of the land.~~

5 ~~6--5. Private roads leading from highways to~~
6 ~~residences or farms. PRIVATE ROADS LEADING FROM HIGHWAYS TO~~
7 ~~RESIDENCES OR FARMS.~~

8 ~~6. RIGHTS TO CONSTRUCT, MAINTAIN AND USE DITCHES,~~
9 ~~CANALS, DIVERSION SYSTEMS, OR LATERALS FOR AGRICULTURAL OR~~
10 ~~DOMESTIC USES.~~

11 ~~7--Telephone or electric light lines.~~

12 ~~8--Telegraph lines.~~

13 ~~9--5--7. Sewerage of any city, county, or town, or~~
14 ~~any subdivision thereof, whether incorporated or~~
15 ~~unincorporated, or of any settlement consisting of not less~~
16 ~~than ten (10) families, or of any public buildings belonging~~
17 ~~to the state, or to any college or university.~~

18 ~~10--Tramway lines.~~

19 ~~11--Electric power lines.~~

20 ~~12--Logging railways.~~

21 ~~13--8. Temporary logging roads and banking grounds for~~
22 ~~the transportation of logs and timber products to public~~
23 ~~streams, lakes, mills, railroads, or highways, for such time~~
24 ~~as the court or judge may determine, provided, the grounds~~
25 ~~of state institutions be excepted. TEMPORARY LOGGING ROADS.~~

1 ~~6--9. Transportation, communications, or energy~~
2 ~~distribution facilities furnished to the public by a~~
3 ~~cooperative, or by a utility corporation whose rates are~~
4 ~~regulated by the public service commission, following a~~
5 ~~hearing and order OR CERTIFICATE under section 70-305. The~~
6 ~~order OR CERTIFICATE creates a disputable presumption:~~

7 ~~(a) of the public necessity of the proposed facility;~~

8 ~~(b) that the taking of the interest sought is~~
9 ~~necessary therefor; and~~

10 ~~(c) that the proposed facility is planned or located~~
11 ~~in a manner which will be most compatible with the greatest~~
12 ~~public good and the least private injury.~~

13 ~~14--7--10. Underground reservoirs suitable for storage~~
14 ~~of natural gas.~~

15 ~~15--To mine and extract ores, metals or minerals owned~~
16 ~~by the plaintiff located beneath or upon the surface of~~
17 ~~property where the title to said surface vests in others,~~
18 ~~provided, however, the use of the surface for strip mining~~
19 ~~or open pit mining of coal (i.e., any mining method or~~
20 ~~process in which the strata or overburden is removed or~~
21 ~~displaced in order to extract the coal) is not a public use~~
22 ~~and eminent domain may not be exercised for this purpose."~~

23 Section 3. Section 93-9910, R.C.M. 1947, is amended to
24 read as follows:

25 "93-9910. Who may defend -- answer of defendant. All

1 persons named in the complaint, in occupation of, or
 2 claiming an interest in, any of the property described in
 3 the complaint, or in the amount to be awarded for the taking
 4 thereof, though not named, may appear. The answer of each
 5 appearing defendant must be filed and served upon the
 6 plaintiff, or upon any attorney for plaintiff, within a
 7 period of fifteen (15) days after the service of summons and
 8 complaint. The answer of each appearing defendant must
 9 contain a specific allegation as to the total amount which
 10 such defendant claims is reasonable and just for the taking
 11 of such defendant's lands or other real property or interest
 12 therein. If the answer of a defendant disputes a
 13 presumption created under sections 32-3904 or 70-305, the
 14 plaintiff shall file the record upon which the findings and
 15 order are based."

16 Section 4. There is a new R.C.M. section numbered
 17 70-305 that reads as follows:

18 Section 70-305. Procedure for obtaining eminent domain
 19 authority. (1) A corporation or other person furnishing
 20 AGRICULTURAL, WOOD PRODUCTS, railroad, telecommunications,
 21 electricity, natural gas or pipeline services, subject to
 22 rate regulation by the public services commission, or a
 23 cooperative furnishing any of these services, may acquire
 24 real property through eminent domain proceedings for a
 25 right-of-way when authorized as provided under this section

1 and section 93-9911. The party seeking to acquire the
 2 property must obtain an order from the commission, ~~or if the~~
 3 ~~proposed use is regulated under the Utility Siting Act, from~~
 4 ~~the board of natural resources and conservation~~ OR A
 5 CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC WELD
 6 FROM THE BOARD OF NATURAL RESOURCES AND CONSERVATION, IF THE
 7 PROPOSED USE IS REGULATED BY THE UTILITY SITING ACT.

8 (2) An order OR CERTIFICATE approving eminent domain
 9 proceedings under this section shall include findings, based
 10 upon a record, that:

11 (a) public interest and necessity require the
 12 construction or completion by the applicant of the proposed
 13 facility for a public purpose recognized by statute;

14 (b) the interest described in the order and sought to
 15 be condemned is necessary for the facility; and

16 (c) the facility is planned and located in a manner
 17 which will be compatible with the greatest public good and
 18 the least private injury.

19 (3) The record supporting the findings shall be made
 20 by the hearing provided under section 70-809, if the
 21 proposed use is regulated under the Utility Siting Act, or
 22 by a substantially equivalent hearing conducted by the
 23 public service commission in other cases. The public
 24 service commission may make rules for the conduct of such
 25 hearings.

1 Section 5. Repealer. Sections 50-801 through 50-816,
2 R.C.M. 1947, are repealed.

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2 INTRODUCED BY DRISCOLL, MELOY, HARPER

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22 corporate name.23 (c) To have a corporate seal which may be altered at
24 pleasure, and to use the same by causing it, or a facsimile
25 thereof, to be impressed or affixed or in any other manner

1 reproduced.

2 (d) To purchase, take, receive, lease, or otherwise
3 acquire, own, hold, improve, use and otherwise deal in and
4 with, real or personal property, or any interest therein,
5 wherever situated, ~~and to acquire property by proceedings~~
6 ~~in eminent domain~~ AND TO ACQUIRE PROPERTY BY PROCEEDINGS IN
7 ~~EMINENT DOMAIN, WHERE--SUCH--POWER--IS--GRANTED--BY--LAW FOR~~
8 ~~PUBLIC USES AS DEFINED BY 93-9902.~~

9 (e) To sell, convey, mortgage, pledge, lease,
10 exchange, transfer and otherwise dispose of all or any part
11 of its property and assets.

12 (f) To lend money to, to guarantee the obligations of
13 and to otherwise assist its employees and, upon the
14 affirmative vote of the holders of a majority of the
15 outstanding shares of the corporation which are entitled to
16 vote for directors, to lend money to, to guarantee the
17 obligations of and to otherwise assist its directors and
18 officers, but no loans shall be made by a corporation
19 secured by its shares.

20 (g) To purchase, take, receive, subscribe for, or
21 otherwise acquire, own, hold, vote, use, employ, sell,
22 mortgage, lend, pledge, or otherwise dispose of, and
23 otherwise use and deal in and with, shares or other
24 interests in, or obligations of, other domestic or foreign
25 corporations, associations, partnerships, joint ventures,

1 co-operatives or individuals, or direct or indirect
2 obligations of the United States or of any other government,
3 state, territory, governmental district or municipality or
4 of any instrumentality thereof.

5 (h) To make contracts and guarantees and incur
6 liabilities, borrow money at such rates of interest as the
7 corporation may determine, issue its notes, bonds, and other
8 obligations, and secure any of its obligations by mortgage
9 or pledge of all or any of its property, franchises and
10 income.

11 (i) To lend money for its corporate purposes, invest
12 and reinvest its funds, and take and hold real and personal
13 property as security for the payment of funds so loaned or
14 invested.

15 (j) To conduct its business, carry on its operations,
16 and have offices and exercise the powers granted by this act
17 in any state, territory, district, or possession of the
18 United States, or in any foreign country.

19 (k) To elect or appoint officers and agents of the
20 corporation, and define their duties and fix their
21 compensation.

22 (l) To make and alter bylaws, not inconsistent with
23 its articles of incorporation or with the laws of this
24 state, for the administration and regulation of the affairs
25 of the corporation.

1 (m) To make donations for the public welfare or for
2 charitable, religious, scientific or educational purposes,
3 and in time of war to make donations in aid of war
4 activities.

5 (n) In time of war to transact any lawful business in
6 aid of the United States in the prosecution of the war.

7 (o) To indemnify any director or officer or former
8 director or officer of the corporation, or any person who
9 may have served at its request as a director or officer of
10 another corporation in which it owns shares of capital stock
11 or of which it is a creditor, against claims, liabilities,
12 expenses and costs necessarily incurred by him in connection
13 with the defense, compromise or settlement of any action,
14 suit or proceeding, civil or criminal, in which he is made a
15 party by reason of being or having been such director or
16 officer, except in relation to matters as to which he shall
17 be adjudged in such action, suit or proceeding to be liable
18 for negligence or misconduct in the performance of duty to
19 the corporation, and to make any other indemnification that
20 shall be authorized by the articles of incorporation or by
21 any bylaw or resolution adopted by the shareholders after
22 notice.

23 (p) To pay pensions and retirement benefits and
24 establish pension plans, pension trusts, profit-sharing
25 plans, stock bonus plans, stock option plans, insurance

1 plans, and incentive plans for any or all of its directors,
2 officers and employees.

3 (q) To cease its corporate activities and surrender
4 its corporate franchise.

5 (r) To have and exercise all powers necessary or
6 convenient to effect any or all of the purposes for which
7 the corporation is organized."

8 Section 2. Section 93-9902, R.C.M. 1947, is amended to
9 read as follows:

10 "93-9902. What are public uses. Subject to the
11 provisions of this chapter, the right of eminent domain may
12 be exercised in behalf of the following public uses:

13 1. All public uses authorized by the government of the
14 United States.

15 2. Public buildings and grounds for the use of the
16 state, and all other public uses authorized by the
17 ~~legislative-assembly-of-the-state~~ legislature.

18 3. Public buildings and grounds ~~for--the--use--of--any~~
19 ~~county,--city,--or--town,--or--school--districts,--canals,~~
20 ~~aqueducts,--flumes,--ditches,--or--pipes--conducting--water,--heat,~~
21 ~~or--gas--for--the--use--of--the--inhabitants--of--any--county,--city,~~
22 ~~or--town,--raising--the--banks--of--streams,--removing--obstructions~~
23 ~~therefrom,--and--widening,--deepening,--or--straightening--their~~
24 ~~channels,--roads,--streets,--and--alleys,~~ and all other public
25 uses for the benefit of any county, city, or town, or school

1 district, or the inhabitants thereof, which may be
2 authorized by the ~~legislative-assembly~~ legislature; but the
3 mode of apportioning and collecting the costs of such
4 improvements shall be such as may be provided in the
5 statutes or ordinances by which the same may be authorized.

6 4. ~~Wharves,--docks,--piers,--chutes,--booms,--ferries,~~
7 ~~bridges,--of--all--kinds,--private--roads,--plank--and--turnpike~~
8 ~~roads,--railroads,--canals,--ditches,--flumes,--aqueducts,--and~~
9 ~~pipes--for--public--transportation,--supplying--mines,--mills,--and~~
10 ~~smelters--for--the--reduction--of--ores--and--farming--neighborhoods~~
11 ~~with--water,--and--drainage--and--reclaiming--lands,--and--for~~
12 ~~floating--logs--and--lumber--on--streams--not--navigable,--and--sites~~
13 Sites for reservoirs, ~~necessary--for--collecting--and--storing~~
14 ~~water,--Provided,--however,--that--such--reservoir--sites--must~~
15 ~~possess--a--public--use--demonstrable--to--the--district--court--as~~
16 ~~the--highest--and--best--use--of--the--land~~ NECESSARY FOR
17 AGRICULTURE AND PUBLIC WATER SUPPLIES.

18 5. ~~Roads,--tunnels,--ditches,--flumes,--pipes,--and--dumping~~
19 ~~places--for--working--mines,--mills,--or--smelters--for--the~~
20 ~~reduction--of--ores,--also--outlets,--natural--or--otherwise,--for~~
21 ~~the--flow,--deposit,--or--conduct--of--tailings--or--refuse--matter~~
22 ~~from--mines,--mills--and--smelters--for--the--reduction--of--ores,~~
23 ~~also--an--occupancy--in--common--by--the--owners--or--the--possessors~~
24 ~~of--different--mines--of--any--place--for--the--flow,--deposit,--or~~
25 ~~conduct--of--tailings--or--refuse--matter--from--their--several~~

1 mines, mills, or smelters for reduction of ores, and sites
 2 for reservoirs necessary for collecting and storing water.
 3 Provided, however, that such reservoir sites must possess a
 4 public use demonstrable to the district court as the highest
 5 and best use of the land.

6 6r--5. Private roads leading from highways to
 7 residences or farms, PRIVATE ROADS LEADING FROM HIGHWAYS TO
 8 RESIDENCES OR FARMS.

9 6. RIGHTS TO CONSTRUCT, MAINTAIN AND USE DITCHES,
 10 CANALS, DIVERSION SYSTEMS, OR LATERALS FOR AGRICULTURAL OR
 11 DOMESTIC USES.

12 7r--Telephone or electric light lines.

13 8r--Telegraph lines.

14 9r--5r--7. Sewerage of any city, county, or town, or
 15 any subdivision thereof, whether incorporated or
 16 unincorporated, or of any settlement consisting of not less
 17 than ten (10) families, or of any public buildings belonging
 18 to the state, or to any college or university.

19 10r--Tramway lines.

20 11r--Electric power lines.

21 12r--Logging railways.

22 13r--8. 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.~~ TEMPORARY LOGGING ROADS.

2 6r--9. Transportation, communications, or energy
 3 distribution facilities furnished to the public by a
 4 cooperative, RAILROAD, or by a utility corporation whose
 5 rates are regulated by the public service commission,
 6 following a hearing and order OR CERTIFICATE under section
 7 70-305. The order OR CERTIFICATE creates a disputable
 8 presumption:

9 (a) of the public necessity of the proposed facility;

10 (b) that the taking of the interest sought is
 11 necessary therefor; and

12 (c) that the proposed facility is planned or located
 13 in a manner which will be most compatible with the greatest
 14 public good and the least private injury.

15 14r--7r--10. Underground reservoirs suitable for storage
 16 of natural gas.

17 15r--To mine and extract ores, metals or minerals owned
 18 by the plaintiff located beneath or upon the surface of
 19 property where the title to said surface vests in others,
 20 provided, however, the use of the surface for strip mining
 21 or open pit mining of coal (if any mining method or
 22 process in which the strata or overburden is removed or
 23 displaced in order to extract the coal) is not a public use
 24 and eminent domain may not be exercised for this purpose."

25 Section 3. Section 93-9910, R.C.M. 1947, is amended to

1 read as follows:

2 "93-9910. Who may defend -- answer of defendant. All
 3 persons named in the complaint, in occupation of, or
 4 claiming an interest in, any of the property described in
 5 the complaint, or in the amount to be awarded for the taking
 6 thereof, though not named, may appear. The answer of each
 7 appearing defendant must be filed and served upon the
 8 plaintiff, or upon any attorney for plaintiff, within a
 9 period of fifteen (15) days after the service of summons and
 10 complaint. The answer of each appearing defendant must
 11 contain a specific allegation as to the total amount which
 12 such defendant claims is reasonable and just for the taking
 13 of such defendant's lands or other real property or interest
 14 therein. If the answer of a defendant disputes a
 15 presumption created under sections 32-3904 or 70-305, the
 16 plaintiff shall file the record upon which the findings and
 17 order are based."

18 Section 4. There is a new R.C.M. section numbered
 19 70-305 that reads as follows:

20 Section 70-305. Procedure for obtaining eminent domain
 21 authority. (1) A corporation or other person furnishing
 22 ~~AGRICULTURAL,--WOOD--PRODUCTS,~~ railroad, telecommunications,
 23 electricity, natural gas or pipeline services, subject to
 24 ~~rate~~ regulation by the public services commission, or a
 25 cooperative furnishing any of these services, may acquire

1 real property through eminent domain proceedings for a
 2 right-of-way when authorized as provided under this section
 3 and section 93-9911. The party seeking to acquire the
 4 property must obtain an order from the commission, ~~ex-if-the~~
 5 ~~proposed-use-is-regulated-under-the-Utility-Siting-Act,-from~~
 6 ~~the--board--of--natural--resources--and--conservation~~ OR A
 7 CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED
 8 FROM THE BOARD OF NATURAL RESOURCES AND CONSERVATION, IF THE
 9 PROPOSED USE IS REGULATED BY THE UTILITY SITING ACT.

10 (2) An order OR CERTIFICATE approving eminent domain
 11 proceedings under this section shall include findings, based
 12 upon a record, that:

13 (a) public interest and necessity require the
 14 construction or completion by the applicant of the proposed
 15 facility for a public purpose recognized by statute;

16 (b) the interest described in the order and sought to
 17 be condemned is necessary for the facility; and

18 (c) the facility is planned and located in a manner
 19 which will be compatible with the greatest public good and
 20 the least private injury.

21 (3) The record supporting the findings shall be made
 22 by the hearing provided under section 70-809, if the
 23 proposed use is regulated under the Utility Siting Act, or
 24 by a substantially equivalent hearing conducted by the
 25 public service commission in other cases. The public

1 service commission may make rules for the conduct of such
2 hearings.

3 Section 5. Repealer. Sections 50-801 through 50-816,
4 R.C.M. 1947, are repealed.

-End-

March 20, 1975

SENATE COMMITTEE ON JUDICIARY
AMENDMENTS TO HOUSE BILL NO. 82

That House Bill No. 82, third reading, be amended as follows:

1. Amend page 6, section 2, line 13.
Following: line 12
Strike: "Sites"
Insert: "Railroads and sites"
2. Amend page 7, section 2, line 9.
Following: "USE"
Insert: "pipelines, aqueducts,"
3. Amend page 7, section 2, line 10.
Following: "AGRICULTURAL"
Insert: ", industrial"
4. Amend page 8, section 2, line 1.
Following: "TEMPORARY"
Insert: "easements for"
5. Amend page 8, section 2, line 1.
Following: "LOGGING"
Insert: "or mining"
6. Amend page 8, section 2, line 1.
Following: "ROADS"
Insert: "for such time as the court may determine"
7. Amend page 8, section 2, line 4.
Following: "cooperative"
Strike: " , RAILROAD,"
8. Amend page 8, section 2, line 16.
Following: line 16
Insert: "11. Development of geothermal energy sources.

12. To mine and extract ores, metals or minerals owned by the plaintiff located beneath or upon the surface of property where the title to the surface vests in another and where actual mining of those ores, metals or minerals or of the contiguous body of ores, metals or minerals was undertaken for a total of at least four (4) months prior to the effective date of this act provided, however, the use of the surface for strip mining or open pit

mining of coal is not a public use and eminent domain may not be exercised for this purpose. "Strip mining" or "open pit mining" means any mining method or process in which the strata or overburden is removed or displaced in order to extract ores, metals or minerals."

9. Amend page 9, section 3, line 15.

Following: "under"

Strike: "sections 32-3904 or"

Insert: "section"

10. Amend page 9, section 3, line 22.

Following: "PRODUCTS,"

Strike: "railroad,"