

1 HB BILL NO. 121  
 2 INTRODUCED BY Dunne

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 4 A BILL FOR AN ACT ENTITLED: "AN ACT DECLARING THAT THE  
 5 EXTRACTION OF METALLIC ORES IS NOT A PUBLIC PURPOSE FOR  
 6 WHICH PROPERTY MAY BE TAKEN BY EMINENT DOMAIN AND SETTING  
 7 FORTH THE PUBLIC POLICY THEREFOR; AMENDING 93-9902, R.C.M.  
 8 1947."

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 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 11 Section 1. Section 93-9902, R.C.M. 1947, is amended to  
 12 read as follows:

13 "93-9902. What are public uses. Subject to the  
 14 provisions of this chapter, the right of eminent domain may  
 15 be exercised in behalf of the following public uses:

16 1. All public uses authorized by the government of the  
 17 United States.

18 2. Public buildings and grounds for the use of the  
 19 state, and all other public uses authorized by the  
 20 legislative assembly of the state.

21 3. Public buildings and grounds for the use of any  
 22 county, city, or town, or school districts; canals,  
 23 aqueducts, flumes, ditches, or pipes conducting water, heat,  
 24 or gas for the use of the inhabitants of any county, city,  
 25 or town; raising the banks of streams, removing obstructions

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

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

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

1 of different mines of any place for the flow, deposit, or  
 2 conduct of tailings or refuse matter from their several  
 3 mines, mills, or smelters for reduction of ores, and sites  
 4 for reservoirs necessary for collecting and storing water.  
 5 Provided, however, that such reservoir sites must possess a  
 6 public use demonstrable to the district court as the highest  
 7 and best use of the land.

8 6. Private roads leading from highways to residences  
 9 or farms.

10 7. Telephone or electric light lines.

11 8. Telegraph lines.

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

17 10. Tramway lines.

18 11. Electric power lines.

19 12. Logging railways.

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

25 14. Underground reservoirs suitable for storage of

1 natural gas.

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

11 Section 2. There is a new R.C.M. section that reads as  
 12 follows:

13 Policy on open-pit mining of metallic ores. The state's  
 14 power of eminent domain may not be exercised to mine and  
 15 extract metallic ores owned by the plaintiff by condemning  
 16 surface rights owned by others because such surface rights  
 17 have been used for residential purposes in many cases and it  
 18 is the policy of the state of Montana that home ownership is  
 19 entitled to higher standing than the privilege of a  
 20 corporation to extract metallic ores by a particular method.

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