

1 H BILL NO. 538  
2 INTRODUCED BY NATHAN JAY

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REGULATE THE  
5 EXERCISE OF THE POWER OF EMINENT DOMAIN BY CERTAIN PERSONS;  
6 TO REQUIRE APPROVAL OF THE DEPARTMENT OF NATURAL RESOURCES  
7 AND CONSERVATION TO CONDEMN RESERVOIR SITES AND TO PREVENT  
8 SUCH CONDEMNATION FOR SPECULATIVE PURPOSES; AND CREATING A  
9 PENALTY FOR UNLAWFUL THREATS TO EXERCISE THE POWER OF  
10 EMINENT DOMAIN TO SECURE RESERVOIR SITES."

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Definitions. For purposes of this act,  
14 unless the context indicates otherwise, the following  
15 definitions apply:

16 (1) "Department" means the department of natural  
17 resources and conservation provided for by Title 82A,  
18 chapter 15.

19 (2) "Person" means an individual or a private or  
20 public corporation, company, association, or partnership but  
21 does not include the state, any county or municipality, or  
22 any political subdivision thereof.

23 Section 2. Department approval prior to exercise of  
24 right of eminent domain to secure a reservoir site. (1)  
25 Before a person may exercise the right of eminent domain to

1 condemn a reservoir site, the person must obtain approval  
2 from the department pursuant to the criteria in [section 4  
3 of this act]. This approval must be obtained prior to filing  
4 a complaint in the district court to condemn land.

5 (2) This section does not apply to any person subject  
6 to the control of the public service commission unless that  
7 person engages principally in the sale or lease of water. A  
8 person who engages principally in the sale or lease of water  
9 or who plans to use the water stored in the reservoir  
10 principally for sale or lease to others is subject to the  
11 provisions of this section.

12 Section 3. Application for approval. (1) A person  
13 subject to the requirements of [section 2 of this act] who  
14 wishes to secure approval of the department shall file an  
15 application for approval on forms to be prescribed by the  
16 department.

17 (2) The department shall either approve or disapprove  
18 the application within 60 days of receipt. The application  
19 shall contain the names and addresses of the owners and  
20 users of the land sought to be condemned. Upon receipt of  
21 the application, the department shall notify those persons  
22 and afford them an opportunity to be heard.

23 (3) If necessary to fully study an application or to  
24 provide an opportunity for the owners and users to be heard,  
25 the 60-day period of subsection (2) may, prior to the end of

1 that period, be extended for an additional 30 days. The  
2 applicant shall immediately be informed of such an  
3 extension.

4 Section 4. Criteria for approval. (1) The department  
5 shall approve in writing an application submitted pursuant  
6 to [subsection 3 of this act] if the applicant affirmatively  
7 demonstrates there is a present or reasonable foreseeable  
8 beneficial use to which the water which will be stored in  
9 the reservoir will be put. The department may not approve  
10 any application when the reservoir is to be used to store  
11 water for speculative purposes.

12 (2) "Reasonable foreseeable beneficial use", as used  
13 in this section, means a beneficial use of water for which  
14 definite plans have been made and either use of the water or  
15 construction of works, other than the reservoir, will  
16 commence within 1 year of the date of the application for  
17 approval. If a permit or other approval of any government  
18 entity is required for the planned use or construction, the  
19 applicant shall demonstrate a reasonable probability that  
20 such a permit or approval can be secured.

21 Section 5. Department rules. The department shall  
22 adopt rules to administer this act.

23 Section 6. Misdemeanor. Any person required to obtain  
24 department approval pursuant to [subsection 2 of this act],  
25 who, prior to receiving such approval, communicates to the

1 owner or user of the land sought to be condemned that the  
2 person is prepared to exercise the right of eminent domain  
3 with respect to the land in question is guilty of a  
4 misdemeanor. Each separate communication is a separate  
5 violation.

6 Section 7. Severability. If a part of this act is  
7 invalid, all valid parts that are severable from the invalid  
8 part remain in effect. If a part of this act is invalid in  
9 one or more of its applications, the part remains in effect  
10 in all valid applications that are severable from the  
11 invalid applications.

-End-

STATE OF MONTANA

REQUEST NO. 272-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 2, , 19 77 , there is hereby submitted a Fiscal Note for House Bill 538 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 538 is an act to regulate the exercise of the power of eminent domain by certain persons; to require approval of the Department of Natural Resources and Conservation to condemn reservoir sites and to prevent such condemnation for speculative purposes; and creating a penalty for unlawful threats to exercise the power of eminent domain to secure reservoir sites.

ASSUMPTIONS:

1. There will be a minimum of ten (10) hearings per year under this act at an average cost of \$500 per hearing.
2. Hearings will be conducted by Department personnel and prehearing investigations are required.

FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>
Personal services	\$4,500	\$4,500
Operating expenses	<u>500</u>	<u>500</u>
Increased expenditures under proposed law	<u>\$5,000</u>	<u>\$5,000</u>

*Richard L. Drury for*  
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-3-77

Approved by Committee  
on Judiciary

HOUSE BILL NO. 538

INTRODUCED BY NATHE, DAY

A BILL FOR AN ACT ENTITLED: "AN ACT TO REGULATE THE EXERCISE OF THE POWER OF EMINENT DOMAIN BY CERTAIN PERSONS; TO REQUIRE APPROVAL OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO CONDEMN RESERVOIR SITES AND TO PREVENT SUCH CONDEMNATION FOR SPECULATIVE PURPOSES; AND CREATING A PENALTY FOR UNLAWFUL THREATS TO EXERCISE THE POWER OF EMINENT DOMAIN TO SECURE RESERVOIR SITES; AMENDING SECTION 93-9902, R.C.M. 1947."

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

Refer to Introduced Bill

(Strike everything after the enactment clause and insert:)

SECTION 1. SECTION 93-9902, R.C.M. 1947, IS AMENDED TO READ AS FOLLOWS:

"93-9902. What are public uses. 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 legislative assembly of the state.

3. Public buildings and grounds for the use of any county, city, or town, or school districts; 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 legislative assembly; 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 for:

- (1) public water supplies or other water resource projects for the state or any political subdivision of state government including any county, city, or town;

1 ~~(2) solely agricultural and/or domestic purposes;~~

2 ~~(3) hydro-electric facilities;~~

3 ~~(4) energy conversion facilities owned exclusively by~~  
 4 ~~rural electric cooperatives or by utilities regulated by the~~  
 5 ~~Montana Public Service Commission. Provided, however, that~~  
 6 such reservoir sites must possess a public use demonstrable  
 7 to the district court as the highest and best use of the  
 8 land.

9 5. Roads, tunnels, ditches, flumes, pipes, and dumping  
 10 places for working mines, mills, or smelters for the  
 11 reduction of ores; also outlets, natural or otherwise, for  
 12 the flow, deposit, or conduct of tailings or refuse matter  
 13 from mines, mills and smelters for the reduction of ores,  
 14 also an occupancy in common by the owners or the possessors  
 15 of different mines of any place for the flow, deposit, or  
 16 conduct of tailings or refuse matter from their several  
 17 mines, mills, or smelters for reduction of ores, and sites  
 18 for reservoirs necessary for collecting and storing water  
 19 for:

20 ~~(1) public water supplies or other water resource~~  
 21 ~~projects for the state or any political subdivision of state~~  
 22 ~~government including any county, city, or town;~~

23 ~~(2) solely agricultural and/or domestic purposes;~~

24 ~~(3) hydro-electric facilities;~~

25 ~~(4) energy conversion facilities owned exclusively by~~

1 ~~rural electric cooperatives or by utilities regulated by the~~  
 2 ~~Montana Public Service Commission. Provided, however, that~~  
 3 such reservoir sites must possess a public use demonstrable  
 4 to the district court as the highest and best use of the  
 5 land.

6 6. Private roads leading from highways to residences  
 7 or farms.

8 7. Telephone or electric light lines.

9 8. Telegraph lines.

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

15 10. Tramway lines.

16 11. Electric power lines.

17 12. Logging railways.

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

23 14. Underground reservoirs suitable for storage of  
 24 natural gas.

25 15. To mine and extract ores, metals or minerals owned

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

-End-