

House Bill 339

In The House

January 19, 1981	Introduced and referred to Committee on Business and Industry.
January 21, 1981	Fiscal note requested.
January 26, 1981	Fiscal note returned.
February 12, 1981	Committee recommend bill do not pass.

HOUSE BILL NO. 339
 INTRODUCED BY *Daily Lakshmi Subedi*
Menakar Aggrawal Kandash Dave Brown

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 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE STATE OR A
 5 MUNICIPALITY TO EXERCISE THE POWER OF EMINENT DOMAIN TO TAKE
 6 ANY WORKPLACE WHICH CLOSES AND WHICH EMPLOYED 250 OR MORE
 7 PERSONS DURING THE LAST 5 YEARS; AMENDING SECTIONS 7-1-4124,
 8 7-5-4106, 7-7-4402, AND 70-30-102, MCA; AND PROVIDING AN
 9 IMMEDIATE EFFECTIVE DATE."
 10

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

12 NEW SECTION. Section 1. Purpose. The closing of
 13 workplaces and the resulting unemployment has a significant
 14 adverse economic impact on the state and on communities in
 15 the state. It is the purpose of [this act] to allow the
 16 state or the affected community to take a workplace which
 17 has closed and which employed 250 or more people at some
 18 point during the last 5 years by exercising the power of
 19 eminent domain. It is the public policy of this state to
 20 permit the state or the affected community to determine how
 21 best to utilize the workplace to offset the adverse economic
 22 impact of the workplace closure.

23 NEW SECTION. Section 2. Definitions. The following
 24 definitions apply in [sections 1 through 4] unless a
 25 different meaning plainly is required:

1 (1) "Closing" means the permanent shutting down of
2 operations at a workplace.

3 (2) "Department" means the department of community
4 affairs.

5 (3) "Workplace" means a factory, plant, office, or
6 other facility that has been in operation in the state for 5
7 or more consecutive years. The term does not include a
8 construction site or other facility or place that was never
9 intended as other than a temporary or seasonal place of
10 employment.

11 NEW SECTION. Section 3. Workplace closure -- property
12 subject to condemnation. If a workplace closes and that
13 workplace employed 250 or more employees at all times during
14 the 5 years immediately preceding closure, the department or
15 an affected municipality may exercise the power of eminent
16 domain by taking the real and personal property necessary to
17 the operation of the workplace.

18 NEW SECTION. Section 4. Cost of acquisition -- bonds
19 authorized. The cost of acquiring the real and personal
20 property necessary to the operation of a workplace taken
21 under [section 3] may be financed in whole or in part by:

22 (1) in the case of a municipality, the issuance of
23 municipal revenue bonds under Title 7, chapter 7, part 44;
24 or

25 (2) in the case of the department, the issuance of

1 bonds in the manner prescribed in Title 17, chapter 5.
 2 Section 5. Section 7-1-4124, MCA, is amended to read:
 3 "7-1-4124. Powers. A municipality with general powers
 4 has the power, subject to the provisions of state law, to:
 5 (1) enact ordinances and resolutions;
 6 (2) sue and be sued;
 7 (3) buy, sell, mortgage, rent, lease, hold, manage, or
 8 dispose of any interest in real or personal property;
 9 (4) contract with persons, corporations, or any other
 10 governmental entity;
 11 (5) pay debts and expenses;
 12 (6) borrow money;
 13 (7) solicit and accept bequests, donations, or grants
 14 of money, property, services, or other advantages and comply
 15 with any condition that is not contrary to the public
 16 interest;
 17 (8) execute documents necessary to receive money,
 18 property, services, or other advantages from the state
 19 government, the federal government, or any other source;
 20 (9) make grants and loans of money, property, and
 21 services for public purposes;
 22 (10) require the attendance of witnesses and production
 23 of documents relevant to matters being considered by the
 24 governing body;
 25 (11) hire, direct, and discharge employees and appoint

1 and remove members of boards;
 2 (12) ratify any action of the municipality or its
 3 officers or employees which could have been approved in
 4 advance;
 5 (13) have a corporate seal and flag;
 6 (14) acquire by eminent domain as provided in Title 70,
 7 chapter 30, any interest in property to provide any service
 8 or facility authorized by law;
 9 (15) initiate a civil action to restrain or enjoin
 10 violation of an ordinance;
 11 (16) enter private property, obtaining warrants when
 12 necessary, for the purpose of enforcing ordinances that
 13 affect the general welfare and public safety;
 14 (17) conduct a census;
 15 (18) conduct inventories of public property and
 16 preparatory studies;
 17 (19) condemn and demolish hazardous structures;
 18 (20) purchase insurance and establish self-insurance
 19 plans;
 20 (21) impound animals and other private property
 21 creating a nuisance or obstructing a street or highway;
 22 (22) establish quarantines; and
 23 ~~(23) take private property to offset the adverse~~
 24 ~~economic effect of a workplace closure in accordance with~~
 25 ~~[sections 1 through 4 of this act]; and~~

1 ~~(23)~~(24) exercise powers not inconsistent with law
2 necessary for effective administration of authorized
3 services and functions."

4 Section 6. Section 7-5-4106, MCA, is amended to read:
5 "7-5-4106. Power of condemnation. (1) The city or
6 town council has power to condemn private property for:

7 (a) opening, establishing, widening, or altering any
8 street, alley, park, sewer, or waterway in the city or town;
9 and

10 (b) for establishing, constructing, and maintaining
11 any sewer, waterway, or drain ditch outside of the corporate
12 limits of the municipality;

13 ~~(c) offsetting the adverse economic effect of a~~
14 ~~workplace closure in accordance with [sections 1 through 4~~
15 ~~of this act]; or~~

16 (d) for any other municipal and public use.

17 (2) The ordinance authorizing the taking of private
18 property for any such use is conclusive as to the necessity
19 of the taking and must conform to and the proceedings
20 thereunder had as provided in Title 70, chapters 30 and 31,
21 concerning eminent domain."

22 Section 7. Section 7-7-4402, MCA, is amended to read:
23 "7-7-4402. Definitions. Whenever used in this part,
24 unless a different meaning clearly appears from the context,
25 the following definitions apply:

1 (1) The term "governing body" shall include bodies and
2 boards, by whatsoever names they may be known, having charge
3 of finances and management of a municipality.

4 (2) The term "municipality" shall include any city or
5 any town, however organized.

6 (3) The term "undertaking" shall mean any one or a
7 combination of the following:

8 (a) water and sewer systems, together with all parts
9 thereof and appurtenances thereto including but not limited
10 to supply and distribution systems, reservoirs, dams, and
11 sewage treatment and disposal works;

12 (b) public airport construction and public airport
13 building;

14 (c) convention facilities;

15 (d) public recreation facilities; and

16 (e) public parking facilities or other
17 revenue-producing facilities and services authorized in
18 these codes for cities and towns; and

19 ~~(f) acquiring the real and personal property necessary~~
20 ~~to the operation of a workplace under [sections 1 through 4~~
21 ~~of this act]."~~

22 Section 8. Section 70-30-102, MCA, is amended to read:
23 "70-30-102. Public uses enumerated. Subject to the
24 provisions of this chapter, the right of eminent domain may
25 be exercised in behalf of the following public uses:

1 (1) all public uses authorized by the government of
2 the United States;

3 (2) public buildings and grounds for the use of the
4 state and all other public uses authorized by the
5 legislature of the state;

6 (3) public buildings and grounds for the use of any
7 county, city or town, or school district; canals, aqueducts,
8 flumes, ditches, or pipes conducting water, heat, or gas for
9 the use of the inhabitants of any county, city, or town;
10 raising the banks of streams, removing obstructions
11 therefrom, and widening, deepening, or straightening their
12 channels; roads, streets, and alleys and all other public
13 uses for the benefit of any county, city, or town or the
14 inhabitants thereof, which may be authorized by the
15 legislature; but the mode of apportioning and collecting the
16 costs of such improvements shall be such as may be provided
17 in the statutes or ordinances by which the same may be
18 authorized;

19 (4) wharves, docks, piers, chutes, booms, ferries,
20 bridges, of all kinds, private roads, plank and turnpike
21 roads, railroads, canals, ditches, flumes, aqueducts, and
22 pipes for public transportation, supplying mines, mills, and
23 smelters for the reduction of ores and farming neighborhoods
24 with water and drainage and reclaiming lands and for
25 floating logs and lumber on streams not navigable and sites

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

5 (5) roads, tunnels, ditches, flumes, pipes, and
6 dumping places for working mines, mills, or smelters for the
7 reduction of ores; also outlets, natural or otherwise, for
8 the flow, deposit, or conduct of tailings or refuse matter
9 from mines, mills, and smelters for the reduction of ores;
10 also an occupancy in common by the owners or the possessors
11 of different mines of any place for the flow, deposit, or
12 conduct of tailings or refuse matter from their several
13 mines, mills, or smelters for reduction of ores and sites
14 for reservoirs necessary for collecting and storing water.
15 However, such reservoir sites must possess a public use
16 demonstrable to the district court as the highest and best
17 use of the land.

18 (6) private roads leading from highways to residences
19 or farms;

20 (7) telephone or electric light lines;

21 (8) telegraph lines;

22 (9) sewerage of any city, county, or town or any
23 subdivision thereof, whether incorporated or unincorporated,
24 or of any settlement consisting of not less than 10 families
25 or of any public buildings belonging to the state or to any

1 college or university;

2 (10) tramway lines;

3 (11) electric power lines;

4 (12) logging railways;

5 (13) temporary logging roads and banking grounds for

6 the transportation of logs and timber products to public

7 streams, lakes, mills, railroads, or highways for such time

8 as the court or judge may determine; provided, the grounds

9 of state institutions be excepted;

10 (14) underground reservoirs suitable for storage of

11 natural gas;

12 (15) to mine and extract ores, metals, or minerals

13 owned by the plaintiff located beneath or upon the surface

14 of property where the title to said surface vests in others.

15 However, the use of the surface for strip mining or open pit

16 mining of coal (i.e., any mining method or process in which

17 the strata or overburden is removed or displaced in order to

18 extract the coal) is not a public use, and eminent domain

19 may not be exercised for this purpose;

20 (16) to restore and reclaim lands strip- or

21 underground-mined for coal and not reclaimed in accordance

22 with Title 82, chapter 4, part 2, and to abate or control

23 adverse affects of strip or underground mining on those

24 lands;

25 ~~(17) to offset the adverse economic effect of a~~

1 ~~workplace closure in accordance with [sections 1 through 4~~

2 ~~of this act]."~~

3 ~~NEW SECTION.~~ Section 9. Coordination with _____

4 Bill ____ [bill abolishing DCA]. If _____ Bill ____

5 introduced in the 47th legislature is signed by the

6 governor, section 2 of this act is replaced with the

7 following section:

8 "Section 2. Definitions. The following definitions

9 apply to [sections 1 through 4] unless a different meaning

10 plainly is required:

11 (1) "Closing" means the permanent shutting down of

12 operations at a workplace.

13 (2) "Department" means the department of economic

14 development.

15 (3) "Workplace" means a factory, plant, office, or

16 other facility that has been in operation in the state for 5

17 or more consecutive years. The term does not include a

18 construction site or other facility or place that was never

19 intended as other than a temporary or seasonal place of

20 employment."

21 Section 10. Applicability. This act applies to

22 workplace closures occurring after January 1, 1980.

23 Section 11. Effective date. This act is effective on

24 passage and approval.

-End-

STATE OF MONTANA

REQUEST NO. 172-81

FISCAL NOTE

Form BD-15

In compliance with a written request received January 21, 19 81, there is hereby submitted a Fiscal Note for House Bill 339 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 339 allows the state or a municipality to exercise the power of eminent domain to take certain workplaces.

FISCAL IMPACT:

Under new Section 4, state or local revenue bonds may be issued to finance the acquisition of applicable real and personal property. Consequently, there would be no fiscal impact to either state or local governments, with the exception of start-up operating capital, which apparently cannot be included in the revenue bond issue.

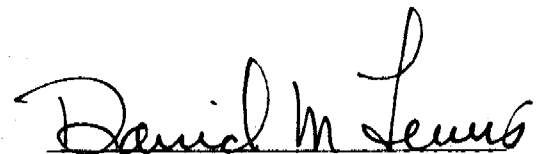
Should the state or any municipality opt to utilize the provisions of the bill, the most obvious qualifying workplace would be the Anaconda Company facilities in Anaconda and Great Falls. Using the most current market values of the non-operating portions of the Anaconda plant as their estimated purchase price, bonds in amount of \$118 million would be required. No information is available on the market value of the Great Falls Anaconda Company facilities.

Estimated Market Value

Reduction Works	\$112 Million
Arbiter Plant	<u>6 Million</u>
	\$118 Million

COMMENTS:

The bill does not indicate whether a municipality or the Department is authorized to run a business that it has acquired. Presumably, the workplace would have to be run by some agency in order to generate enough profit to pay off the bonds. There may be practical and legal problems with a governmental body running a business.



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-26-81