

House Bill 799

In The House

February 17, 1981

Introduced and referred  
to Committee on Judiciary.

February 24, 1981

Committee recommend bill  
do not pass.

1 House BILL NO. 799  
2 INTRODUCED BY Keedy Hoff  
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE  
5 LAW WITH RESPECT TO EMINENT DOMAIN; REDEFINING PUBLIC USES;  
6 REQUIRING THAT A PERMIT FOR A PROJECT BE OBTAINED BEFORE  
7 PROPERTY CAN BE TAKEN OR IF PUBLIC SERVICE COMMISSION  
8 AUTHORIZATION IS NECESSARY THAT IT HAS BEEN GRANTED BEFORE  
9 PROPERTY IS TAKEN; REQUIRING PRORATION OF TAXES; REVISING  
10 THE METHOD OF PAYMENT; AND PROVIDING THAT WEED CONTROL IS  
11 THE RESPONSIBILITY OF THE PERSON CONDEMNING; AMENDING  
12 SECTIONS 70-30-102, 70-30-104, 70-30-110, 70-30-111, AND  
13 70-30-308, MCA."

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. Section 70-30-102, MCA, is amended to read:  
17 "70-30-102. Public uses enumerated. Subject to the  
18 provisions of this chapter, the right of eminent domain may  
19 be exercised in behalf of the following public uses:

- 20 (1) all public uses authorized by the government of  
21 the United States;
- 22 (2) public buildings and grounds for the use of the  
23 state and all other public uses authorized by the  
24 legislature of the state;
- 25 (3) public buildings and grounds for the use of any

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

13 (4) ~~(a)~~ wharves, docks, piers, chutes, booms, ferries,  
14 bridges, of all kinds, private roads, plank and turnpike  
15 roads, railroads, canals, ditches, flumes, aqueducts, and  
16 pipes for public transportation, supplying mines, mills, and  
17 smelters for the reduction of ores and farming neighborhoods  
18 with water and drainage and reclaiming lands and for  
19 floating logs and lumber on streams not navigable and sites  
20 for reservoirs necessary for collecting and storing water.  
21 The acquisition of reservoirs necessary for the collection  
22 and storage of water is a public use only when acquired for  
23 the following:

- 24 (i) public water supplies financed and owned by the  
25 state, a local government unit, or political subdivision

1 thereof (including but not limited to irrigation districts  
 2 and water conservancy districts); or by a regulated utility;

3 (iii) domestic uses;

4 (iiii) irrigation and livestock uses;

5 (iv) joint state-private water development projects  
 6 that are approved by the legislature. However,---such  
 7 reservoir-sites

8 (b) All uses enumerated in subsection (4)(a) must  
 9 possess a public use demonstrable to the district court as  
 10 the highest and best use of the land.

11 (5) (a) roads, tunnels, ditches, flumes, pipes, and  
 12 dumping-places-for-working-mines,mills,or-smelters-for-the  
 13 reduction-of-ores-also-outlets,natural-or--otherwise--for  
 14 the--flow--deposits-or-conduct-of-tailings-or-refuse-matter  
 15 from-mines,mills,ond-smelters-for-the-reduction--of--ores,  
 16 also--an-occupancy-in-common-by-the-owners-or-the-possessors  
 17 of-different-mines-of-any-plate-for-the--flow--deposits--or  
 18 conduct--of--tailings--or--refuse--matter-from-their-several  
 19 mines,mills,or-smelters-for-reduction-of--ores and sites  
 20 for reservoirs necessary for collecting and storing water.  
 21 The acquisition of sites for reservoirs necessary for  
 22 collecting and storing water is a public use only when  
 23 acquired for the following:

24 (i) public water supplies financed and owned by the  
 25 state, a local government unit, or political subdivision

1 thereof (including but not limited to irrigation districts  
 2 and water conservation districts); or by a regulated utility;

3 (iii) domestic uses;

4 (iiii) irrigation and livestock uses;

5 (iv) joint state-private water development projects  
 6 that are approved by the legislature. However,---such  
 7 reservoir-sites

8 (b) All uses enumerated in subsection (5)(a) must  
 9 possess a public use demonstrable to the district court as  
 10 the highest and best use of the land.

11 (6) private roads leading from highways to residences  
 12 or farms;

13 (7) telephone or electric light lines;

14 (8) telegraph lines;

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

20 (10) tramway lines;

21 (11) electric power lines;

22 (12) logging railways;

23 (13) temporary logging roads and banking grounds for  
 24 the transportation of logs and timber products to public  
 25 streams, lakes, mills, railroads, or highways for such time

1 as the court or judge may determine; provided, the grounds  
2 of state institutions be excepted;

3 (14) underground reservoirs suitable for storage of  
4 natural gas;

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

13 (16) to restore and reclaim lands strip- or  
14 underground-mined for coal and not reclaimed in accordance  
15 with Title 62, chapter 4, part 2, and to abate or control  
16 adverse affects of strip or underground mining on those  
17 lands."

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

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

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

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

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

19 (3) an easement when taken for any other use;

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

23 Section 3. Section 70-30-110, MCA, is amended to read:

24 "70-30-110. Survey and location of property to be  
25 taken -- greatest public good -- least private injury. In

1 all cases where land is required for public use, the state  
 2 or its agents in charge of such use may survey and locate  
 3 the same, but it must be located in the manner which will be  
 4 most compatible with the greatest public good and the least  
 5 private injury and subject to the provisions of 70-30-206.  
 6 The state or its agents in charge of such public use may  
 7 enter upon the land and make examination, surveys, and maps  
 8 thereof, and such entry shall constitute no cause of action  
 9 in favor of the owners of the land except from injuries  
 10 resulting from negligence, wantonness, or malice. Nothing  
 11 in this section limits the right of landowners to  
 12 compensation for such entry."

13 Section 4. Section 70-30-111, MCA, is amended to read:

14 "70-30-111. Facts necessary to be found before  
 15 condemnation. Before property can be taken, it must appear:

16 (1) that the use to which it is to be applied is a use  
 17 authorized by law;

18 (2) that the taking is necessary to such use;

19 (3) that all the permits that are required for the  
 20 project have been obtained;

21 (4) that, whenever authorization is necessary from the  
 22 public service commission, the commission has affirmatively  
 23 determined that the granting of the power of eminent domain  
 24 will serve the public convenience and necessity; and

25 (5) if already appropriated to some public use,

1 that the public use to which it is to be applied is a more  
 2 necessary public use."

3 Section 5. Section 70-30-308, MCA, is amended to read:

4 "70-30-308. How payment made -- execution or annulment  
 5 for nonpayment. (1) Payment may be made to the defendants  
 6 entitled thereto, or the money may be deposited in court for  
 7 the defendants and be distributed to those entitled thereto.  
 8 However, at the option of the defendants, payments may be  
 9 made:

10 (a) on an annual basis, utilizing the installment  
 11 contract method;

12 (b) by means of a land exchange between the defendants  
 13 and plaintiffs if the land to be provided by the plaintiffs  
 14 in the exchange is of equal or more value than the land  
 15 being condemned; or

16 (c) if an easement over or through the defendants'  
 17 property is involved, payments may be made on an annual  
 18 basis. Such payments must be for the value of the use of the  
 19 land in the same manner as a lease payment. The payments  
 20 shall continue for the duration of the easement and may be  
 21 renegotiated every 10 years.

22 (2) If the money be not so paid or deposited, the  
 23 defendants may have execution as in civil cases, and if the  
 24 money cannot be made on execution, the court or judge, upon  
 25 a showing to that effect, must set aside and annul the

1 entire proceedings and restore possession of the property to  
2 the defendant if possession has been taken by the  
3 plaintiff."

4 NEW SECTION. Section 6. Weed control responsibility.  
5 The plaintiff, upon taking possession of the land, is  
6 responsible for the control and destruction of noxious weeds  
7 on such land until natural grasses have taken over the  
8 property and noxious weeds have ceased to exist.

9 NEW SECTION. Section 7. Proration of taxes. The  
10 plaintiff shall be assessed his pro rata share of taxes for  
11 the land being condemned as of the date of possession. The  
12 plaintiff shall be assessed for all taxes accruing after the  
13 date of possession.

14 Section 8. Codification instruction. Sections 6 and 7  
15 are intended to be codified as an integral part of Title 70,  
16 chapter 30, part 3, and the provisions of Title 70, chapter  
17 30, apply to sections 6 and 7 and sections 6 and 7 apply to  
18 Title 70, chapter 30.

-End-

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