

HB 616 INTRODUCED BY SPAETH
PROVIDES RIGHT OF EMINENT DOMAIN TO OWNERS OF OIL
AND GAS LEASES

2/05 INTRODUCED
2/05 REFERRED TO NATURAL RESOURCES
2/09 HEARING
2/12 COMMITTEE REPORT--BILL NOT PASSED
2/13 ADVERSE COMMITTEE REPORT ADOPTED

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1 House BILL NO. 616
2 INTRODUCED BY Spaeth
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4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THE RIGHT OF
5 EMINENT DOMAIN TO OWNERS OF OIL AND GAS LEASES FOR ROADS AND
6 PIPELINES; AND AMENDING SECTIONS 70-30-102, 82-2-201 THROUGH
7 82-2-203, AND 82-2-205, MCA."
8

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

10 Section 1. Section 70-30-102, MCA, is amended to read:
11 "70-30-102. Public uses enumerated. Subject to the
12 provisions of this chapter, the right of eminent domain may
13 be exercised in behalf of the following public uses:

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

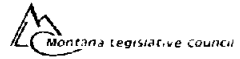
16 (2) public buildings and grounds for the use of the
17 state and all other public uses authorized by the
18 legislature of the state;

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

1 uses for the benefit of any county, city, or town or the
2 inhabitants thereof, which may be authorized by the
3 legislature; but the mode of apportioning and collecting the
4 costs of such improvements shall be such as may be provided
5 in the statutes or ordinances by which the same may be
6 authorized;

7 (4) wharves, docks, piers, chutes, booms, ferries,
8 bridges, of all kinds, private roads, plank and turnpike
9 roads, railroads, canals, ditches, flumes, aqueducts, and
10 pipes for public transportation, supplying mines, mills, and
11 smelters for the reduction of ores and farming neighborhoods
12 with water and drainage and reclaiming lands and for
13 floating logs and lumber on streams not navigable 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 (5) roads, tunnels, ditches, flumes, pipes, and
19 dumping 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 However, such reservoir sites must possess a public use
 4 demonstrable to the district court as the highest and best
 5 use of the 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 10 families
 13 or of any public buildings belonging to the state or to any
 14 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

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

8 (16) to restore and reclaim lands strip- or
 9 underground-mined for coal and not reclaimed in accordance
 10 with Title 82, chapter 4, part 2, and to abate or control
 11 adverse affects of strip or underground mining on those
 12 lands;

13 (17) roads for developing oil and natural gas leases
 14 and pipelines for conveying oil and natural gas from the
 15 leases."

16 Section 2. Section 82-2-201, MCA, is amended to read:
 17 "82-2-201. Right-of-way of owners of oil or natural
 18 gas leases and mines. The owner of an oil or natural gas
 19 lease or a mining claim held under the laws of the United
 20 States by patent or otherwise or under the local laws and
 21 customs of the state has a right-of-way over and across the
 22 land or mining claim of another, patented or otherwise, as
 23 prescribed in this part."

24 Section 3. Section 82-2-202, MCA, is amended to read:
 25 "82-2-202. Road, pipeline or ditch right-of-way.

1 Whenever an oil or natural gas lease or a mine or mining
 2 claim is so situated that it cannot be conveniently worked
 3 without a road thereto or pipelines to convey oil and
 4 natural gas therefrom or a ditch to convey water thereto or
 5 a ditch or a cut to convey the water therefrom or without a
 6 flume to carry water and tailings therefrom or without a
 7 shaft or tunnel thereto, which road, pipeline, ditch, cut,
 8 flume, or tunnel must necessarily pass over, under, through,
 9 or across any lands or mining claims owned or occupied by
 10 another, such owner is entitled to a right-of-way for said
 11 road, pipeline, ditch, cut, flume, shaft, or tunnel over,
 12 under, through, and across the lands or mining claims
 13 belonging to another, upon compliance with the provisions of
 14 this part."

15 Section 4. Section 82-2-203, MCA, is amended to read:

16 "82-2-203. Proceedings to obtain right-of-way.
 17 Whenever such owner desires to develop an oil or natural gas
 18 lease or work a mine or mining claim and it is necessary to
 19 enable him to do so successfully and conveniently that he
 20 should have a right-of-way for any of the purposes mentioned
 21 in the foregoing sections and if such right-of-way has not
 22 been acquired by agreement between him and the owner of the
 23 land or claims over, under, across, and upon which he seeks
 24 to establish such right-of-way, it is lawful for him to
 25 present to the judge of the district court a complaint

1 asking that such right-of-way be awarded to him. The
 2 complaint must be verified and contain a particular
 3 description of the character and extent of the right sought,
 4 a description of the oil or natural gas lease or mine or
 5 mining claim of the owner, and the mining claim or claims
 6 and the lands to be affected by such right-of-way, with the
 7 names of the occupants or owners thereof, and may also set
 8 forth any tender or offer hereinafter mentioned."

9 Section 5. Section 82-2-205, MCA, is amended to read:

10 "82-2-205. Court order and appointment of
 11 commissioners. Upon the return of the summons or upon any
 12 day to which the hearing is adjourned, the defendants may
 13 answer, and issue must be joined, and the judge must hear
 14 the allegations and proofs of the respective parties. If,
 15 upon such hearing, the judge is satisfied that the leases or
 16 claims of the plaintiff can be worked conveniently only by
 17 means of the privilege asked for, he must make an order
 18 adjudging and awarding to the plaintiff such right-of-way
 19 and must appoint three commissioners who are disinterested
 20 persons and residents of the county to assess the damages to
 21 the lands or claims affected by such order."

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