

HB 715 INTRODUCED BY COBB, ET AL.
REMOVES MINES, MILLS, AND SMELTERS FROM THE EMINENT
DOMAIN LAWS

2/11 INTRODUCED
2/11 REFERRED TO JUDICIARY
2/16 HEARING
2/16 TABLED IN COMMITTEE

1 House BILL NO. 715
2 INTRODUCED BY Cobb Miles

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REMOVE MINES, MILLS,
5 AND SMELTERS FOR THE REDUCTION OF ORES FROM THE EMINENT
6 DOMAIN LAWS AND THE DEFINITION OF PUBLIC USES; AMENDING
7 SECTIONS 70-30-102 AND 70-30-104, MCA; REPEALING SECTIONS
8 82-2-201 THROUGH 82-2-212 AND 82-2-221 THROUGH 82-2-224,
9 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 70-30-102, MCA, is amended to read:

13 "70-30-102. Public uses enumerated. 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
17 the United States;

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

21 (3) public buildings and grounds for the use of any
22 county, city or town, or school district; canals, aqueducts,
23 flumes, ditches, or pipes conducting water, heat, or gas for
24 the use of the inhabitants of any county, city, or town;
25 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 legislature; but the mode of apportioning and collecting the
6 costs of such improvements shall be such as may be provided
7 in the statutes or ordinances by which the same may be
8 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 However, such reservoir sites must possess a public use
18 demonstrable to the district court as the highest and best
19 use of the land.

20 ~~(5) a roads, tunnels, ditches, flumes, pipes, and~~
21 ~~dumping 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~~



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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 However,--such--reservoir--sites--must--possess--a--public--use
 6 demonstrable--to--the--district--court--as--the--highest--and--best
 7 use--of--the--land;

8 (6)(5) private roads leading from highways to
 9 residences or farms;

10 (7)(6) telephone or electric light lines;

11 (8)(7) telegraph lines;

12 (9)(8) 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 10 families
 15 or of any public buildings belonging to the state or to any
 16 college or university;

17 (10)(9) tramway lines;

18 (11)(10) electric power lines;

19 (12)(11) logging railways;

20 (13)(12) temporary logging roads and banking grounds
 21 for 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)(13) underground reservoirs suitable for storage of

1 natural gas;

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

10 (16)(14) to restore and reclaim lands strip- or
 11 underground-mined for coal and not reclaimed in accordance
 12 with Title 82, chapter 4, part 2, and to abate or control
 13 adverse affects of strip or underground mining on those
 14 lands."

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

16 "70-30-104. What estates and rights in land may be
 17 taken. The following is a classification of the estates and
 18 rights in lands subject to be taken for the public use:

19 (1) such estate or rights as may be necessary up to
 20 and including a fee simple when taken for public buildings
 21 or grounds or for permanent buildings or for an outlet for a
 22 flow or a place for the deposit of debris or tailings of a
 23 mine or for the mining and extracting of ores, metals, or
 24 minerals when the same are owned by the plaintiff but
 25 located beneath or upon the surface of property where the

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

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

16 (3) an easement, leasehold, or other interest, for so
 17 long as the interest is necessary for the purpose described
 18 in the complaint, or fee simple when taken for any other
 19 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 NEW SECTION. Section 3. Repealer. (1) Sections
 24 82-2-201 through 82-2-212, MCA, are repealed.

25 (2) Sections 82-2-221 through 82-2-224, MCA, are

1 repealed.

2 NEW SECTION. Section 4. Coordination instructions. If
 3 Bill No. [LC 673], including the sections of that
 4 bill amending 82-2-201 through 82-2-203 and 82-2-205, is
 5 passed and approved, section 3(1) of this act is void. If
 6 both this act and Bill No. [LC 673] are passed and
 7 approved, sections 82-2-201 through 82-2-203 and 82-2-205,
 8 are amended as follows to accomplish the purposes of this
 9 act:

10 (1) Section 82-2-201, MCA, is amended to read:

11 "82-2-201. Right-of-way of owners of mines oil or
 12 natural gas leases. The owner of a-mining-claim an oil or
 13 natural gas lease held under the laws of the United States
 14 by patent or otherwise or under the local laws and customs
 15 of the state has a right-of-way over and across the land-or
 16 mining-claim lease of another ~~7--patented--or--otherwise,~~ as
 17 prescribed in this part."

18 (2) Section 82-2-202, MCA, is amended to read:

19 "82-2-202. Road or ditch pipeline right-of-way.
 20 Whenever a-mine-or-mining-claim an oil or natural gas lease
 21 is so situated that it cannot be conveniently worked without
 22 a road thereto or a-ditch-to-convey-water-thereto-or-a-ditch
 23 or-a-cut-to-convey-the-water-therefrom-or-without-a-flume-to
 24 carry--water--and--tailings--therefrom-or-without-a-shaft-or
 25 tunnel-thereto pipelines to convey oil and natural gas

1 therefrom, which ~~road, ditch, cut, flume, or tunnel~~ or
 2 pipelines must necessarily pass over, under, through, or
 3 across any lands or mining claims owned or occupied by
 4 another, such owner is entitled to a right-of-way for said
 5 ~~road, ditch, cut, flume, shaft, or tunnel~~ or pipelines over,
 6 under, through, and or across the lands or mining claims
 7 belonging to another, upon compliance with the provisions of
 8 this part."

9 (3) Section 82-2-203, MCA, is amended to read:

10 "82-2-203. Proceedings to obtain right-of-way.
 11 Whenever such owner desires to ~~work-a-mine-or-mining-claim~~
 12 develop an oil or natural gas lease and it is necessary to
 13 enable him to do so successfully and conveniently that he
 14 should have a right-of-way for any of the purposes mentioned
 15 in the foregoing sections and if such right-of-way has not
 16 been acquired by agreement between him and the owner of the
 17 land or claims over, under, across, and upon which he seeks
 18 to establish such right-of-way, it is lawful for him to
 19 present to the judge of the district court a complaint
 20 asking that such right-of-way be awarded to him. The
 21 complaint must be verified and contain a particular
 22 description of the character and extent of the right sought,
 23 a description of the ~~mine-or-mining-claim~~ oil or natural gas
 24 lease of the owner, and the mining claim or claims and the
 25 lands to be affected by such right-of-way, with the names of

1 the occupants or owners thereof, and may also set forth any
 2 tender or offer hereinafter mentioned."

3 (4) Section 82-2-205, MCA, is amended to read:

4 "82-2-205. Court order and appointment of
 5 commissioners. Upon the return of the summons or upon any
 6 day to which the hearing is adjourned, the defendants may
 7 answer, and issue must be joined, and the judge must hear
 8 the allegations and proofs of the respective parties. If,
 9 upon such hearing, the judge is satisfied that the ~~claims~~
 10 leases of the plaintiff can be worked conveniently only by
 11 means of the privilege asked for, he must make an order
 12 adjudging and awarding to the plaintiff such right-of-way
 13 and must appoint three commissioners who are disinterested
 14 persons and residents of the county to assess the damages to
 15 the lands or claims affected by such order."

16 NEW SECTION. Section 5. Effective date. This act is
 17 effective on passage and approval.

-End-