

ASSEMBLY BILL NO. 180—ASSEMBLYMEN HORNE, OHRENSCHALL,
PIERCE; AIZLEY, ANDERSON, ATKINSON, BOBZIEN,
CONKLIN, FLORES, FRIERSON, HARDY, KIRKPATRICK,
OCEGUERA, SEGERBLOM AND SMITH

FEBRUARY 16, 2011

JOINT SPONSORS: SENATORS SCHNEIDER, PARKS, LESLIE,
BREEDEN; COPENING, ROBERSON AND SETTELMAYER

Referred to Committee on Judiciary

SUMMARY—Makes various changes to provisions governing
eminent domain. (BDR 3-115)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ***[omitted material]*** is material to be omitted.

AN ACT relating to eminent domain; removing the authorization of
a person who is not a public agency to exercise the power
of eminent domain to acquire real property for mining,
smelting and related activities; and providing other
matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law authorizes the use of eminent domain to acquire real property for
2 certain public uses, including mining, smelting and related activities. (NRS 37.010)
3 This bill removes the authorization of a person who is not a public agency to
4 exercise the power of eminent domain for the purposes of mining, smelting and
5 related activities.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** NRS 37.0095 is hereby amended to read as follows:
2 37.0095 1. Except as otherwise provided in subsection 2,
3 only a public agency may exercise the power of eminent domain
4 pursuant to the provisions of this chapter.



2. Except as otherwise provided in NRS 37.0097, the power of eminent domain may be exercised by a person who is not a public agency pursuant to NRS 37.230 and paragraphs ~~[(f), (h), (j), (m)]~~ **(g), (i), (l)** and ~~[(p)]~~ **(o)** of subsection 1 of NRS 37.010.

3. As used in this section, "public agency" means an agency or political subdivision of this State or the United States.

Sec. 2. NRS 37.010 is hereby amended to read as follows:

37.010 1. Subject to the provisions of this chapter and the limitations in subsections 2 and 3, the right of eminent domain may be exercised in behalf of the following public uses:

(a) Federal activities. All public purposes authorized by the Government of the United States.

(b) State activities. Public buildings and grounds for the use of the State, the Nevada System of Higher Education and all other public purposes authorized by the Legislature.

(c) County, city, town and school district activities. Public buildings and grounds for the use of any county, incorporated city or town, or school district, reservoirs, water rights, canals, aqueducts, flumes, ditches or pipes for conducting water for the use of the inhabitants of any county, incorporated city or town, for draining any county, incorporated city or town, for raising the banks of streams, removing obstructions therefrom, and widening, deepening or straightening their channels, for roads, streets and alleys, and all other public purposes for the benefit of any county, incorporated city or town, or the inhabitants thereof.

(d) Bridges, toll roads, railroads, street railways and similar uses. Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads, roads for transportation by traction engines or locomotives, roads for logging or lumbering purposes, and railroads and street railways for public transportation.

(e) Ditches, canals, aqueducts for smelting, domestic uses, irrigation and reclamation. Reservoirs, dams, water gates, canals, ditches, flumes, tunnels, aqueducts and pipes for supplying persons, mines, mills, smelters or other works for the reduction of ores, with water for domestic and other uses, for irrigating purposes, for draining and reclaiming lands, or for floating logs and lumber on streams not navigable.

~~(f) Mining, smelting and related activities. Mining, smelting and related activities as follows:~~

~~—— (1) Mining and related activities, which are recognized as the paramount interest of this State:~~

~~—— (2) Roads, railroads, tramways, tunnels, ditches, flumes, pipes, reservoirs, dams, water gates, canals, aqueducts and dumping places to facilitate the milling, smelting or other reduction of ores, the working, reclamation or dewatering of mines, and for all mining~~



~~purposes, outlets, natural or otherwise, for the deposit or conduct of tailings, refuse, or water from mills, smelters, or other work for the reduction of ores from mines, mill dams, pipelines, tanks or reservoirs for natural gas or oil, an occupancy in common by the owners or possessors of different mines, mills, smelters or other places for the reduction of ores, or any place for the flow, deposit or conduct of tailings or refuse matter and the necessary land upon which to erect smelters and to operate them successfully, including the deposit of fine flue dust, fumes and smoke.~~

~~(g)}~~ Byroads. Byroads leading from highways to residences and farms.

~~(h)}~~ (g) Public utilities. Lines for telegraph, telephone, electric light and electric power and sites for plants for electric light and power.

~~(i)}~~ (h) Sewerage. Sewerage of any city, town, settlement of not less than 10 families or any public building belonging to the State or college or university.

~~(j)}~~ (i) Water for generation and transmission of electricity. Canals, reservoirs, dams, ditches, flumes, aqueducts and pipes for supplying and storing water for the operation of machinery to generate and transmit electricity for power, light or heat.

~~(k)}~~ (j) Cemeteries, public parks. Cemeteries or public parks.

~~(l)}~~ (k) Pipelines of beet sugar industry. Pipelines to conduct any liquids connected with the manufacture of beet sugar.

~~(m)}~~ (l) Pipelines for petroleum products, natural gas. Pipelines for the transportation of crude petroleum, petroleum products or natural gas, whether interstate or intrastate.

~~(n)}~~ (m) Aviation. Airports, facilities for air navigation and aerial rights-of-way.

~~(o)}~~ (n) Monorails. Monorails and any other overhead or underground system used for public transportation.

~~(p)}~~ (o) Video service providers. Video service providers that are authorized pursuant to chapter 711 of NRS to operate a video service network. The exercise of the power of eminent domain may include the right to use the wires, conduits, cables or poles of any public utility if:

(1) It creates no substantial detriment to the service provided by the utility;

(2) It causes no irreparable injury to the utility; and

(3) The Public Utilities Commission of Nevada, after giving notice and affording a hearing to all persons affected by the proposed use of the wires, conduits, cables or poles, has found that it is in the public interest.

~~(q)}~~ (p) Redevelopment. The acquisition of property pursuant to NRS 279.382 to 279.685, inclusive.



2. Notwithstanding any other provision of law and except as otherwise provided in this subsection, the public uses for which private property may be taken by the exercise of eminent domain do not include the direct or indirect transfer of any interest in the property to another private person or entity. Property taken by the exercise of eminent domain may be transferred to another private person or entity in the following circumstances:

(a) The entity that took the property transfers the property to a private person or entity and the private person or entity uses the property primarily to benefit a public service, including, without limitation, a utility, railroad, public transportation project, pipeline, road, bridge, airport or facility that is owned by a governmental entity.

(b) The entity that took the property leases the property to a private person or entity that occupies an incidental part of an airport or a facility that is owned by a governmental entity and, before leasing the property:

(1) Uses its best efforts to notify the person from whom the property was taken that the property will be leased to a private person or entity that will occupy an incidental part of an airport or facility that is owned by a governmental entity; and

(2) Provides the person from whom the property was taken with an opportunity to bid or propose on any such lease.

(c) The entity that took the property:

(1) Took the property in order to acquire property that was abandoned by the owner, abate an immediate threat to the safety of the public or remediate hazardous waste; and

(2) Grants a right of first refusal to the person from whom the property was taken that allows that person to reacquire the property on the same terms and conditions that are offered to the other private person or entity.

(d) The entity that took the property exchanges it for other property acquired or being acquired by eminent domain or under the threat of eminent domain for roadway or highway purposes, to relocate public or private structures or to avoid payment of excessive compensation or damages.

(e) The person from whom the property is taken consents to the taking.

3. The entity that is taking property by the exercise of eminent domain has the burden of proving that the taking is for a public use.

4. For the purposes of this section, an airport authority or any public airport is not a private person or entity.

Sec. 3. NRS 279.471 is hereby amended to read as follows:

279.471 1. Except as otherwise provided in this subsection, an agency may exercise the power of eminent domain to acquire



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1 property for a redevelopment project only if the agency adopts a
2 resolution that includes a written finding by the agency that a
3 condition of blight exists for each individual parcel of property to be
4 acquired by eminent domain. An agency may exercise the power of
5 eminent domain to acquire a parcel of property that is not blighted
6 for a redevelopment project if the agency adopts a resolution that
7 includes a written finding by the agency that a condition of blight
8 exists for at least two-thirds of the property within the
9 redevelopment area at the time the redevelopment area was created.

10 2. In addition to the requirement set forth in subsection 1, an
11 agency may exercise the power of eminent domain to acquire
12 property for a redevelopment project only if:

13 (a) The property sought to be acquired is necessary to carry out
14 the redevelopment plan;

15 (b) The agency has adopted a resolution of necessity that
16 complies with the requirements set forth in subsection 3; and

17 (c) The agency has complied with the provisions of
18 NRS 279.4712.

19 3. A resolution of necessity required pursuant to paragraph (b)
20 of subsection 2 must set forth:

21 (a) A statement that the property will be acquired for purposes
22 of redevelopment as authorized pursuant to paragraph ~~(c)~~ (p) of
23 subsection 1 of NRS 37.010 and subsection 2 of NRS 279.470;

24 (b) A reasonably detailed description of the property to be
25 acquired;

26 (c) A finding by the agency that the public interest and necessity
27 require the acquisition of the property;

28 (d) A finding by the agency that acquisition of the property will
29 be the option for redevelopment that is most compatible with the
30 greatest public good and the least private injury; and

31 (e) A finding by the agency that acquisition of the property is
32 necessary for purposes of redevelopment.

33 4. After an agency adopts a resolution pursuant to subsection 1
34 or 2, the resolution so adopted and the findings set forth in the
35 resolution are final and conclusive and are not subject to judicial
36 review unless credible evidence is adduced to suggest that the
37 resolution or the findings set forth therein were procured through
38 bribery or fraud.

39 **Sec. 4.** This act becomes effective upon passage and approval.

