

ASSEMBLY BILL NO. 186—ASSEMBLYMEN GOEDHART; HAMBRICK,
HANSEN, HARDY, KIRNER, MCARTHUR, SHERWOOD,
STEWART AND WOODBURY

FEBRUARY 17, 2011

JOINT SPONSORS: SENATORS CEGAVSKE, GUSTAVSON,
HALSETH AND ROBERSON

Referred to Committee on Judiciary

SUMMARY—Allows certain real property managed or controlled
by the Federal Government to be taken by eminent
domain for certain purposes. (BDR 3-373)

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; allowing certain real property
managed or controlled by the Federal Government to be
taken by eminent domain for certain purposes; and
providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law sets forth the provisions pursuant to which property may be
2 acquired in Nevada using the power of eminent domain. (Chapter 37 of NRS)
3 Pursuant to those provisions, the power of eminent domain may be exercised to
4 acquire property for certain public uses, including, without limitation: (1) federal,
5 state, county, city, town and school district activities; and (2) sites for plants for
6 electric light and power. (NRS 37.010) In general, the power of eminent domain
7 may be exercised only by a public agency. However, a person who is not a public
8 agency may exercise the power of eminent domain for the purposes of mining
9 activities, operating a public utility, obtaining water to generate and transmit
10 electricity, transporting petroleum products or natural gas and operating a video
11 service network. (NRS 37.0095)

12 The United States Constitution authorizes the Congress of the United States to
13 dispose of and make all needful rules and regulations concerning the territory and
14 other property belonging to the United States. (U.S. Const. Art. IV, § 3, cl. 2) In
15 addition, the United States Constitution authorizes the Congress of the United
16 States to exercise exclusive jurisdiction over all places within a state that are
17 purchased with the consent of the legislature of that state for the erection of forts,



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magazines, arsenals, dockyards and other needful buildings. (U.S. Const. Art. I, § 8, cl. 17)

Section 1 of this bill allows all real property managed or controlled by the Federal Government, other than property owned by the Federal Government in accordance with the provisions of Clause 17 of Section 8 of Article I of the United States Constitution, to be taken by eminent domain if the property is used to construct and maintain a renewable energy generation project or any other project that uses renewable energy to generate and transmit electricity.

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

Section 1. Chapter 37 of NRS is hereby amended by adding thereto a new section to read as follows:

1. All real property managed or controlled by the Federal Government, other than real property owned by the Federal Government in accordance with Clause 17 of Section 8 of Article I of the Constitution of the United States, may be taken under this chapter if the real property is used for:

(a) The construction and maintenance of a renewable energy generation project or any other project that uses renewable energy to generate electricity; or

(b) Any related transmission line or similar appurtenance required for the project.

2. As used in this section:

(a) "Renewable energy" has the meaning ascribed to it in NRS 278.0173.

(b) "Renewable energy generation project" has the meaning ascribed to it in NRS 278.01735.

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 *set forth* in subsections 2 and 3, *and except as otherwise provided in section 1 of this act*, 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



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1 or straightening their channels, for roads, streets and alleys, and all
2 other public purposes for the benefit of any county, incorporated
3 city or town, or the inhabitants thereof.

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

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

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

18 (1) Mining and related activities, which are recognized as the
19 paramount interest of this State.

20 (2) Roads, railroads, tramways, tunnels, ditches, flumes,
21 pipes, reservoirs, dams, water gates, canals, aqueducts and dumping
22 places to facilitate the milling, smelting or other reduction of ores,
23 the working, reclamation or dewatering of mines, and for all mining
24 purposes, outlets, natural or otherwise, for the deposit or conduct of
25 tailings, refuse, or water from mills, smelters, or other work for the
26 reduction of ores from mines, mill dams, pipelines, tanks or
27 reservoirs for natural gas or oil, an occupancy in common by the
28 owners or possessors of different mines, mills, smelters or other
29 places for the reduction of ores, or any place for the flow, deposit or
30 conduct of tailings or refuse matter and the necessary land upon
31 which to erect smelters and to operate them successfully, including
32 the deposit of fine flue dust, fumes and smoke.

33 (g) Byroads. Byroads leading from highways to residences and
34 farms.

35 (h) Public utilities. Lines for telegraph, telephone, electric light
36 and electric power and sites for plants for electric light and power.

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

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

44 (k) Cemeteries, public parks. Cemeteries or public parks.



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

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

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

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

(p) 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) 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



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(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 37.100 is hereby amended to read as follows:

37.100 1. Before the plaintiff obtains possession of the property, the plaintiff shall give to the owner of the property a copy of all appraisals of the property obtained by the plaintiff.

2. The plaintiff may move the court or a judge thereof at any time after the commencement of suit, on notice for such time as the court or judge may direct to the defendant if the defendant is a resident of the county or has appeared in the action, otherwise by serving a notice directed to the defendant on the clerk of the court, for an order permitting the plaintiff to occupy the premises sought to be condemned, pending the entry of judgment, and to do such work thereon as may be required for the easement, fee or property rights sought, according to its nature.

3. At the occupancy hearing, the court shall make a separate and distinct determination as to whether the property is being taken for a public use pursuant to NRS 37.010, *or section 1 of this act*, if the defendant requests such a determination.

4. If the defendant does not request a determination pursuant to subsection 3 or if the court determines that the property is being taken for a public use pursuant to NRS 37.010, *or section 1 of this act*, the court or judge shall take proof, by affidavit or otherwise, of the value of the premises sought to be condemned, the damages which will accrue from the condemnation and the reasons for requiring a speedy occupation, and shall grant or refuse the motion



1 according to the equity of the case and the relative damages which
2 may accrue to the parties.

3 5. If the motion is granted, the court or judge shall require the
4 plaintiff to execute and file in court a bond to the defendant, with
5 sureties, to be approved by the court or judge in a penal sum to be
6 fixed by the court or judge, not less than double the value of the
7 premises sought to be condemned and the damages which will ensue
8 from condemnation and occupation, as the value and damages may
9 appear to the court or judge on the hearing, and conditioned to pay
10 the adjudged value of the premises and all damages if the property is
11 condemned, and to pay all damages arising from occupation before
12 judgment if the premises are not condemned, and all costs adjudged
13 to the defendant in the action. The sureties shall justify before the
14 court or judge, after a reasonable notice to the defendant of the time
15 and place of justification.

16 6. In lieu of a bond the plaintiff, with the consent of the court,
17 may deposit with the clerk of the court a sum equal to the value of
18 the premises plus damages, as appraised by the plaintiff. Upon
19 application of the defendant and upon notice to all parties, the court
20 or judge may order the money deposited with the clerk of the court
21 or any part thereof to be paid to the defendant. If the amount of the
22 compensation awarded upon judgment is less than the sum
23 deposited and paid to the defendant, the court shall enter judgment
24 in favor of the plaintiff and against the defendant for the amount of
25 the excess. Application by the defendant to the court for withdrawal
26 of part or all of the money deposited and the payment of that money
27 to the defendant does not prejudice the right of the defendant to
28 contest the amount of compensation to be finally awarded. The
29 receipt by the defendant of a part or all of the money deposited must
30 be conditioned upon the waiver of all defenses except those relating
31 to the amount of compensation.

32 7. The amount of the penal bond or the deposit is for the
33 purpose of the motion only and is not admissible in evidence on
34 final hearing.

35 8. The court or judge may also restrain the defendant from
36 hindering or interfering with the occupation of the premises and the
37 doing thereon of the work required for the easement, fee or property
38 rights.

39 9. The provisions of this section requiring the execution and
40 filing of a bond do not apply in any action or proceeding in which
41 the State of Nevada is the plaintiff, but the public faith and credit of
42 the State of Nevada is hereby pledged as security in lieu of the bond.
43 The provisions of this subsection do not prevent the State of Nevada
44 from depositing, in lieu of a pledge of the public faith and credit,



- 1 with the clerk of the court a sum equal to the value of the premises
- 2 plus any damages as appraised by the State.
- 3 **Sec. 4.** This act becomes effective on July 1, 2011.

