

Amendments to House Bill No. 240  
1st Reading Copy

Requested by Representative Wayne Stahl

For the House Taxation Committee

Prepared by Sonja Nowakowski  
March 17, 2011 (7:51am)

1. Title, page 1, line 4.

Following: "LAWS;"

Insert: "REVISING AUTHORIZED PUBLIC USES FOR THE PURPOSES OF  
EMINENT DOMAIN;"

2. Title, page 1, line 9.

Following: "SECTIONS"

Insert: "7-13-4405, 7-13-4406, 7-16-2105, 7-16-4106,"

Following: "70-30-101,"

Insert: "70-30-102,"

Following: "70-30-111,"

Strike: "AND"

Following: "70-30-305,"

Insert: "76-12-108, AND 85-1-204,"

3. Page 1.

Following: line 12

Insert: "**Section 1.** Section 7-13-4405, MCA, is amended to read:

**"7-13-4405. Acquisition of water rights and other necessary property.** For the purpose of providing the city or town with an adequate water supply for municipal and domestic purposes, the city or town council shall procure appropriate water rights and the necessary real and personal property to make an adequate water supply available. The water rights and property may be acquired by purchase, appropriation, location, condemnation pursuant to Title 70, chapter 30, or in any other legal manner."  
{ Internal References to 7-13-4405: None. }

Insert: "**Section 2.** Section 7-13-4406, MCA, is amended to read:

**"7-13-4406. Control over territory occupied by water supply system -- taxation and condemnation powers.** (1) Cities and towns have jurisdiction and control:

- (a) over the territory occupied by their public works;
- (b) over and along the line of reservoirs, streams, trenches, pipes, drains, and other appurtenances used in the construction and operation of the public works; and
- (c) over the source of streams from which water is taken for the enforcement of its sanitary ordinances, the abatement of nuisances, and the general preservation of the purity of its water supply.

(2) Cities and towns may enact all ordinances and

regulations necessary to implement subsection (1). For Except as provided in subsection (3), for this purpose, the city or town may condemn private property in the manner provided in Title 70, chapter 30, and may levy a tax on all consumers of water for the purpose of defraying the expenses of procurement.

(3) A city or town may not condemn water rights for a water supply system in the manner provided in Title 70, chapter 30."

{ Internal References to 7-13-4406: None. }

**Insert:** "Section 3. Section 7-16-2105, MCA, is amended to read:

**"7-16-2105. Acquisition of land by county for public recreational or cultural purposes.** A county may acquire, by purchase, grant, deed, gift, devise, ~~condemnation pursuant to Title 70, chapter 30,~~ or otherwise, lands suitable for public camping, public recreational purposes, civic centers, youth centers, museums, recreational centers, and any combination of the enumerated uses. A county may lease the land tracts, each of which must be situated so that it offers ready access to a public highway."

{ Internal References to 7-16-2105:

7-16-2106x 70-30-102a }

**"Section 4.** Section 7-16-4106, MCA, is amended to read:

**"7-16-4106. Acquisition of property for athletic fields and civic stadiums.** (1) A city or town council may:

(a) ~~acquire by gift, or purchase, or condemnation pursuant to Title 70, chapter 30,~~ lands for athletic fields and civic stadiums within or outside of the corporate limits of the municipality;

(b) ~~establish and regulate athletic fields and civic stadiums;~~

(c) exercise municipal jurisdiction over the acquired land when the land or any portion of the land is outside of the corporate limits of the municipality to the same extent as though the land was within the corporate limits; and

(d) construct, maintain, and regulate athletic and civic stadiums on the land.

(2) The city or town council may set aside or designate portions or tracts of land now owned by any municipality for the purpose of providing athletic fields and civic stadiums."

{ Internal References to 7-16-4106:

70-30-102a }

**Renumber:** subsequent sections

4. Page 2.

**Following:** line 2

**Insert:** "Section 6. Section 70-30-102, MCA, is amended to read:

**"70-30-102. Public uses enumerated.** Subject to the provisions of this chapter, the right of eminent domain may be exercised for the following public uses:

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

~~(2)~~ (1) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;

~~(3)~~ (2) public buildings and grounds for the use of any county, city, town, or school district;

~~(4)~~ (3) canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town;

~~(5)~~ (4) projects to raise the banks of streams, remove obstructions from streambanks, and widen, deepen, or straighten stream channels;

~~(6)~~ (5) ~~water and~~ water supply systems as provided in Title 7, chapter 13, part 44;

~~(7)~~ (6) roads, streets, alleys, controlled-access facilities, and other publicly owned buildings and facilities for the benefit of a county, city, or town or the inhabitants of a county, city, or town;

~~(8)~~ (7) acquisition of road-building material as provided in 7-14-2123;

~~(9)~~ (8) stock lanes as provided in 7-14-2621;

~~(10)~~ (9) parking areas as provided in 7-14-4501 and 7-14-4622;

~~(11)~~ (10) airport purposes as provided in 7-14-4801, 67-2-301, 67-7-210, and Title 67, chapters 10 and 11;

~~(12)~~ (11) urban renewal projects as provided in Title 7, chapter 15, parts 42 and 43, except that private property may be acquired for urban renewal through eminent domain only if the property is determined to be a blighted area, as defined in 7-15-4206(2)(a), (2)(h), (2)(k), or (2)(n), and may not be acquired for urban renewal through eminent domain if the purpose of the project is to increase government tax revenue;

~~(13)~~ (12) housing authority purposes as provided in Title 7, chapter 15, part 44;

~~(14)~~ (13) ~~county recreational and cultural purposes as provided in 7-16-2105;~~

~~(15)~~ (14) ~~city or town athletic fields and civic stadiums as provided in 7-16-4106;~~

~~(16)~~ (13) county cemetery purposes pursuant to 7-11-1021, cemetery association purposes as provided in 35-20-104, and state veterans' cemetery purposes as provided in 10-2-604;

~~(17)~~ (14) preservation of historical or archaeological sites as provided in 23-1-102 and 87-1-209(2);

~~(18)~~ (15) public assistance purposes as provided in 53-2-201;

~~(19)~~ (16) highway purposes as provided in 60-4-103 and 60-4-104;

~~(20)~~ (17) common carrier pipelines as provided in 69-13-104;

~~(21)~~ (18) water supply, water transportation, and water treatment systems as provided in 75-6-313;

~~(22)~~ (19) mitigation of the release or threatened release of a hazardous or deleterious substance as provided in 75-10-720;

~~(23)~~ (20) the acquisition of nonconforming outdoor advertising as provided in 75-15-123;

~~(24)~~ (21) screening for or the relocation or removal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills as provided in 75-15-223;

~~(25)~~ (22) water conservation and flood control projects as provided in 76-5-1108;

~~(26)~~ acquisition of natural areas as provided in ~~76-12-108;~~

~~(27)~~ acquisition of water rights for the natural flow of water as provided in ~~85-1-204;~~

~~(28)~~ (23) property and water rights necessary for waterworks as provided in 85-1-209 and 85-7-1904;

~~(29)~~ (24) conservancy district purposes as provided in 85-9-410;

~~(30)~~ (25) wharves, docks, piers, chutes, booms, ferries, bridges, private roads, plank and turnpike roads, and railroads;

~~(31)~~ (26) canals, ditches, flumes, aqueducts, and pipes for:

(a) supplying mines, mills, and smelters for the reduction of ores;

(b) supplying farming neighborhoods with water and drainage;

(c) reclaiming lands; and

(d) floating logs and lumber on streams that are not navigable;

~~(32)~~ (27) sites for reservoirs necessary for collecting and storing water. However, reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

~~(33)~~ (28) roads, tunnels, and dumping places for working mines, mills, or smelters for the reduction of ores;

~~(34)~~ (29) outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills, and smelters for the reduction of ores;

~~(35)~~ (30) an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores and sites for reservoirs necessary for collecting and storing water for the mines, mills, or smelters. However, the reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

~~(36)~~ (31) private roads leading from highways to residences or farms;

~~(37)~~ (32) telephone or electrical energy lines, except that local government entities as defined in 2-7-501, municipal utilities, or competitive electricity suppliers may not use this chapter to acquire existing telephone or electrical energy lines and appurtenant facilities owned by a public utility or cooperative for the purpose of transmitting or distributing

electricity or providing telecommunications services;

(38)(33) telegraph lines;

(39)(34) sewerage of any:

(a) county, city, or town or any subdivision of a county, city, or town, whether incorporated or unincorporated;

(b) settlement consisting of not less than 10 families; or

(c) public buildings belonging to the state or to any college or university;

(40)(35) tramway lines;

(41)(36) logging railways;

(42)(37) temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways for a time that the court or judge may determine. However, the grounds of state institutions may not be used for this purpose.

(43)(38) underground reservoirs suitable for storage of natural gas;

(44)(39) projects to mine and extract ores, metals, or minerals owned by the condemnor located beneath or upon the surface of property where the title to the surface vests in others. However, the use of the surface of property for strip mining or open-pit mining of coal (i.e., any mining method or process in which the strata or overburden is removed or displaced in order to extract the coal) is not a public use, and eminent domain may not be exercised for this purpose.

(45)(40) projects to restore and reclaim lands that were strip mined or underground mined for coal and not reclaimed in accordance with Title 82, chapter 4, part 2, and to abate or control adverse effects of strip or underground mining on those lands."

{ Internal References to 70-30-102:

7-5-4106x      7-11-1021x      7-15-4206x      15-7-202x

70-30-103x      70-30-111x      77-2-101x }"

**Renumber:** subsequent sections

5. Page 3, line 8.

**Strike:** "5"

**Insert:** "12"

6. Page 3.

**Following:** line 24

**Insert:** "Section 10. Section 76-12-108, MCA, is amended to read:

"76-12-108. **Acquisition of lands.** Subject to the limits of available appropriations, the board is authorized to acquire interests in land by any lawful means for the purpose of designating natural areas. ~~The board may exercise the power of eminent domain, provided for in Title 70, chapter 30, only in specific instances authorized by the legislature.~~"

{ Internal References to 76-12-108:

70-30-102a }"

**Insert:** "Section 11. Section 85-1-204, MCA, is amended to read:

**"85-1-204. Department powers over state water.** (1) The department may sell, lease, and otherwise dispose of water impounded under this chapter. The water may be sold for the purpose of irrigation, development of power, watering of stock, or other purposes. The department may also lease water under the state water leasing program established under the provisions of 85-2-141. To the extent that it may be necessary to carry out this chapter and subject to compliance with the other provisions of this chapter, the department has full control of all the water of the state not under the exclusive control of the United States and not appropriated for private use. The department shall take the necessary actions to appropriate and conserve the water for the use of the people. The authority of the department conferred by this chapter extends and applies to rights to the natural flow of the water of this state that it may acquire ~~by condemnation pursuant to Title 70, chapter 30,~~ or by purchase, exchange, appropriation, or agreement.

(2) For the purpose of regulating the diversion of water, the department may enter upon the means and place of use of all appropriators for making surveys of respective rights and seasonal needs.

(3) The department may take into consideration the decrees of the courts of this state having jurisdiction that purport to adjudicate the water of a stream or its tributaries. A fair, reasonable, and equitable reconciliation must be made between the claimants asserting rights under different decrees and between decreed rights and asserted rights of appropriation not adjudicated by a court.

(4) The department may hold hearings relating to the rights of respective claimants after first giving the notice that it considers appropriate. The department shall make findings of the date and quantity of appropriation and use of all claimants that the department recognizes and observes in diverting the water that the department is appropriated. The department may measure and distribute the water to the holder of the recognized appropriation right under agreed-upon terms.

(5) The department, when engaged in controlling and dividing the natural flow of a stream under the authority granted by this chapter, is exercising a police power of the state, and water commissioners appointed by any court may not deprive the department of any of the water appropriated or administered under agreement with respective water right holders. The holder of a prior right who contends that the department is not recognizing and respecting the appropriation may resort to a court for the purpose of determining whether or not the rights of the claimant have been invaded, and the department shall observe the terms of the final decree.

(6) When the department impounds or acquires the right of appropriation of the water of a stream, it may divert or authorize the diversion at a point on the stream or a portion of

the stream when it is done without injury to a prior appropriator."

{ Internal References to 85-1-204:  
70-30-102a }"

**Renumber:** subsequent sections

7. Page 6, line 22.

**Strike:** "5"

**Insert:** "12"

8. Page 6, line 24.

**Strike:** "5"

**Insert:** "12"

9. Page 6, line 25.

**Strike:** "6"

**Insert:** "13"

10. Page 6, line 26.

**Strike:** "6"

**Insert:** "13"

- END -