

HOUSE BILL NO. 761
INTRODUCED BY D. HAINES

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AUTHORITY TO EXERCISE EMINENT DOMAIN FOR THE PURPOSE OF ESTABLISHING A VETERANS' CEMETERY; REQUIRING THE DEPARTMENT OF MILITARY AFFAIRS TO ENTER INTO NEGOTIATIONS FOR THE ACQUISITION OF PROPERTY FOR A VETERANS' CEMETERY IF THE LOCATION MEETS FEDERAL REQUIREMENTS FOR FEDERAL FUNDING; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 10-2-601 AND 70-30-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Authority to exercise eminent domain for purposes of establishing veterans' cemetery. The department of military affairs may take property for public use for a veterans' cemetery or place of burial of the dead. The power of eminent domain must be exercised under the provisions of Title 70, chapter 30.

NEW SECTION. Section 2. Department of military affairs required to enter negotiations. (1) On [the effective date of this act], the department of military affairs shall initiate activities at Fort Missoula, Missoula County, Montana, to complete all preapplication requirements provided in the federal department of veterans affairs national cemetery administration's state cemetery grants program grant requirements, including but not limited to:

- (a) completion of an environmental assessment and an environmental impact statement if necessary;
- (b) designation of the area to be served by the preferred location of the cemetery;
- (c) a design concept that describes the primary features to be included in the project and the number of grave sites to be provided; and
- (d) a needs assessment that explains the need for the project to establish, expand, or improve the veterans' cemetery.

(2) If the review provided for in subsection (1) shows that the property at Fort Missoula, in Missoula County, Montana, meets all the federal requirements for a veterans' cemetery, the board shall enter into negotiations with the appropriate entities at Fort Missoula, in Missoula County, Montana, for the acquisition of

property for the purpose of a veterans' cemetery.

Section 3. Section 10-2-601, MCA, is amended to read:

"10-2-601. State veterans' cemeteries. The department of military affairs shall establish state veterans' cemeteries. A cemetery must be located at Fort William Henry Harrison, Lewis and Clark County, Montana, and at Miles City. The department may establish a state veterans' cemetery at Fort Missoula, Missoula County, Montana."

Section 4. 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) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;
- (3) public buildings and grounds for the use of any county, city, town, or school district;
- (4) canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town;
- (5) projects to raise the banks of streams, remove obstructions from streambanks, and widen, deepen, or straighten stream channels;
- (6) water and water supply systems as provided in Title 7, chapter 13, part 44;
- (7) roads, streets, alleys, controlled-access facilities, and all other public uses for the benefit of a county, city, or town or the inhabitants of a county, city, or town;
- (8) acquisition of road-building material as provided in 7-14-2123;
- (9) stock lanes as provided in 7-14-2621;
- (10) parking areas as provided in 7-14-4501 and 7-14-4622;
- (11) airport and landing field purposes as provided in 7-14-4801, 67-2-301, 67-5-202, 67-6-301, and Title 67, chapters 10 and 11;
- (12) urban renewal projects as provided in Title 7, chapter 15, parts 42 and 43;
- (13) housing authority purposes as provided in Title 7, chapter 15, part 44;
- (14) county recreational and cultural purposes as provided in 7-16-2105;
- (15) city or town athletic fields and civic stadiums as provided in 7-16-4106;

- (16) county cemetery purposes as provided in 7-35-2201, ~~and~~ cemetery association purposes as provided in 35-20-104, and state veterans' cemetery purposes as provided in [section 1];
- (17) preservation of historical or archaeological sites as provided in 23-1-102 and 87-1-209(2);
- (18) public assistance purposes as provided in 53-2-201;
- (19) highway purposes as provided in 60-4-103 and 60-4-104;
- (20) common carrier pipelines as provided in 69-13-104;
- (21) water supply, water transportation, and water treatment systems as provided in 75-6-313;
- (22) mitigation of the release or threatened release of a hazardous or deleterious substance as provided in 75-10-720;
- (23) the acquisition of nonconforming outdoor advertising as provided in 75-15-123;
- (24) 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) 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) property and water rights necessary for waterworks as provided in 85-1-209 and 85-7-1904;
- (29) conservancy district purposes as provided in 85-9-410;
- (30) wharves, docks, piers, chutes, booms, ferries, bridges, private roads, plank and turnpike roads, and railroads;
- (31) 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) 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) roads, tunnels, and dumping places for working mines, mills, or smelters for the reduction of ores;
- (34) 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) 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) private roads leading from highways to residences or farms;

(37) telephone or electrical energy lines;

(38) telegraph lines;

(39) 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) tramway lines;

(41) logging railways;

(42) 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) underground reservoirs suitable for storage of natural gas;

(44) 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) 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 affects of strip or underground mining on those lands."

NEW SECTION. Section 5. Appropriation. There is appropriated \$150,000 from the special revenue account provided for in 10-2-603 to the department of military affairs for the purpose of completing the preapplication inspection and requirements as provided in [section 2(1)].

NEW SECTION. Section 6. Codification instruction. [Section 1] is intended to be codified as an

integral part of Title 10, chapter 2, part 6, and the provisions of Title 10, chapter 2, part 6, apply to [section 1].

NEW SECTION. **Section 7. Coordination instruction.** If Senate Bill No. 401 is passed and approved, then all references in [this act] to the department of military affairs must be changed to the board of veterans' affairs.

NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

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