

SENATE BILL NO. 313
INTRODUCED BY D. WANZENRIED

A BILL FOR AN ACT ENTITLED: "AN ACT DESIGNATING AN ELECTRICAL GENERATION FACILITY NECESSARY TO COMPLY WITH FEDERAL OR STATE LAWS OR RULES AS A PUBLIC USE FOR WHICH EMINENT DOMAIN MAY BE EXERCISED; GRANTING A PUBLIC UTILITY THE ABILITY TO EXERCISE THE POWER OF EMINENT DOMAIN TO COMPLY WITH FEDERAL OR STATE STANDARDS OR RULES; GRANTING THE PUBLIC SERVICE COMMISSION THE AUTHORITY TO APPROVE OR DENY A UTILITY'S ABILITY TO PROCEED WITH THE ACQUISITION OF FACILITIES USING THE POWER OF EMINENT DOMAIN; PROVIDING THAT ACQUISITION OF A HYDROELECTRIC FACILITY BY A PUBLIC UTILITY IS A MORE NECESSARY PUBLIC USE; AND AMENDING SECTIONS 70-30-102 AND 70-30-111, MCA."

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

Section 1. 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 purposes as provided in 7-14-4801, 67-2-301, 67-7-210, 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, cemetery association purposes as provided in 35-20-104, and state veterans' cemetery purposes as provided in 10-2-604;
- (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; and

(46) subject to [section 2], electrical generation facilities necessary for a public utility, as defined in

69-8-103, to comply with standards mandated by federal or state laws or rules."

NEW SECTION. Section 2. Acquisition of electrical generation facilities -- public service commission findings. (1) A public utility may acquire electrical generation facilities that were operating in Montana before July 1, 2003, in order to comply with mandates in federal or state laws or rules.

(2) A utility may not acquire electrical generation facilities owned or operated by:

(a) another public utility regulated by the commission;

(b) rural electric cooperatives; or

(c) federal or state power agencies.

(3) (a) A utility must have the approval of the public service commission before proceeding with an acquisition.

(b) If the commission finds that acquisition of the facility is necessary for the utility to comply with mandates in federal or state laws or rules, the commission shall provide written findings granting the utility the ability to proceed with the acquisition.

(c) Upon rejection of a request to proceed, the commission shall provide written findings for its decision.

(4) Inclusion of the property in the rate base of the public utility is subject to commission authority according to the provisions of Title 69.

Section 3. Section 70-30-111, MCA, is amended to read:

"70-30-111. Facts necessary to be found before condemnation. (1) Before property can be taken, the condemnor shall show by a preponderance of the evidence that the public interest requires the taking based on the following findings:

~~(1)~~(a) the use to which the property is to be applied is a use authorized by law;

~~(2)~~(b) the taking is necessary to the use;

~~(3)~~(c) if already being used for a public use, that the public use for which the property is proposed to be used is a more necessary public use;

~~(4)~~(d) an effort to obtain the property interest sought to be taken was made by submission of a written offer and the offer was rejected; and

(e) if the taking involves an electrical generation facility, that the requirements of [section 2] are met.

(2) If the property sought to be taken is a hydroelectric generating facility with associated water rights as provided in 85-1-204, then the taking by the utility is a more necessary public use pursuant to subsection (1)(c)."

NEW SECTION. **Section 4. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 70, chapter 30, and the provisions of Title 70, chapter 30, apply to [section 2].

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