

SENATE BILL NO. 159

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A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING THE AUTHORITY TO EXERCISE EMINENT DOMAIN
BY COUNTIES FOR PUBLIC RECREATIONAL OR CULTURAL PURPOSES AND BY THE LAND BOARD TO
DESIGNATE NATURAL AREAS; PROHIBITING THE USE OF EMINENT DOMAIN FOR USES WHOSE
PRIMARY PURPOSE IS A TRAIL, A PATH, OR A CONNECTING TRAIL OR PATH; AMENDING SECTIONS
7-16-2105, 70-30-102, AND 76-12-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN
APPLICABILITY DATE."

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

NEW SECTION. Section 1. Eminent domain not to be used for certain recreational purposes.

The right of eminent domain may not be exercised for:

- (1) trails, paths, or other ways for walking, hiking, bicycling, equestrian use, or other recreational uses whose primary purpose is a foot path, equestrian trail, bicycle path, or walkway; or
- (2) a public park whose primary purpose is:
 - (a) as a trail, path, or other way for walking, hiking, bicycling, or equestrian use; or
 - (b) to connect other trails, paths, or other ways for walking, hiking, bicycling, or equestrian use.

Section 2. 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, or 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

1 tracts, each of which must be situated so that it offers ready access to a public highway."

2

3 **Section 3.** Section 70-30-102, MCA, is amended to read:

4 **"70-30-102. Public uses enumerated.** Subject to the provisions of this chapter, the right of eminent
5 domain may be exercised for the following public uses:

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

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

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

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

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

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

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

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

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

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

20 (11) airport purposes as provided in 7-14-4801, 67-2-301, 67-7-210, and Title 67, chapters 10 and
21 11;

22 (12) urban renewal projects as provided in Title 7, chapter 15, parts 42 and 43, except that private
23 property may be acquired for urban renewal through eminent domain only if the property is determined to be a
24 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
25 through eminent domain if the purpose of the project is to increase government tax revenue;

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

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

28 ~~(15)~~(14) city or town athletic fields and civic stadiums as provided in 7-16-4106;

1 ~~(16)~~(15) county cemetery purposes pursuant to 7-11-1021, cemetery association purposes as provided
2 in 35-20-104, and state veterans' cemetery purposes as provided in 10-2-604;

3 ~~(17)~~(16) preservation of historical or archaeological sites as provided in 23-1-102 and 87-1-209(2);
4 ~~(18)~~(17) public assistance purposes as provided in 53-2-201;
5 ~~(19)~~(18) highway purposes as provided in 60-4-103 and 60-4-104;
6 ~~(20)~~(19) common carrier pipelines as provided in 69-13-104;
7 ~~(21)~~(20) water supply, water transportation, and water treatment systems as provided in 75-6-313;
8 ~~(22)~~(21) mitigation of the release or threatened release of a hazardous or deleterious substance as
9 provided in 75-10-720;

10 ~~(23)~~(22) the acquisition of nonconforming outdoor advertising as provided in 75-15-123;
11 ~~(24)~~(23) screening for or the relocation or removal of junkyards, motor vehicle graveyards, motor
12 vehicle wrecking facilities, garbage dumps, and sanitary landfills as provided in 75-15-223;
13 ~~(25)~~(24) water conservation and flood control projects as provided in 76-5-1108;
14 ~~(26)~~ acquisition of natural areas as provided in 76-12-108;
15 ~~(27)~~(25) acquisition of water rights for the natural flow of water as provided in 85-1-204;
16 ~~(28)~~(26) property and water rights necessary for waterworks as provided in 85-1-209 and 85-7-1904;
17 ~~(29)~~(27) conservancy district purposes as provided in 85-9-410;
18 ~~(30)~~(28) wharves, docks, piers, chutes, booms, ferries, bridges, private roads, plank and turnpike
19 roads, and railroads;

20 ~~(31)~~(29) canals, ditches, flumes, aqueducts, and pipes for:

21 (a) supplying mines, mills, and smelters for the reduction of ores;
22 (b) supplying farming neighborhoods with water and drainage;
23 (c) reclaiming lands; and
24 (d) floating logs and lumber on streams that are not navigable;

25 ~~(32)~~(30) sites for reservoirs necessary for collecting and storing water. However, reservoir sites must
26 possess a public use demonstrable to the district court as the highest and best use of the land.

27 ~~(33)~~(31) roads, tunnels, and dumping places for working mines, mills, or smelters for the reduction of
28 ores;

1 ~~(34)~~(32) outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from
2 mines, mills, and smelters for the reduction of ores;

3 ~~(35)~~(33) an occupancy in common by the owners or the possessors of different mines of any place for
4 the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction
5 of ores and sites for reservoirs necessary for collecting and storing water for the mines, mills, or smelters.
6 However, the reservoir sites must possess a public use demonstrable to the district court as the highest and
7 best use of the land.

8 ~~(36)~~(34) private roads leading from highways to residences or farms;

9 ~~(37)~~(35) telephone or electrical energy lines, except that local government entities as defined in 2-7-
10 501, municipal utilities, or competitive electricity suppliers may not use this chapter to acquire existing
11 telephone or electrical energy lines and appurtenant facilities owned by a public utility or cooperative for the
12 purpose of transmitting or distributing electricity or providing telecommunications services;

13 ~~(38)~~(36) telegraph lines;

14 ~~(39)~~(37) sewerage of any:

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

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

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

19 ~~(40)~~(38) tramway lines;

20 ~~(41)~~(39) logging railways;

21 ~~(42)~~(40) temporary logging roads and banking grounds for the transportation of logs and timber
22 products to public streams, lakes, mills, railroads, or highways for a time that the court or judge may determine.
23 However, the grounds of state institutions may not be used for this purpose.

24 ~~(43)~~(41) underground reservoirs suitable for storage of natural gas;

25 ~~(44)~~(42) projects to mine and extract ores, metals, or minerals owned by the condemnor located
26 beneath or upon the surface of property where the title to the surface vests in others. However, the use of the
27 surface of property for strip mining or open-pit mining of coal (i.e., any mining method or process in which the
28 strata or overburden is removed or displaced in order to extract the coal) is not a public use, and eminent

1 domain may not be exercised for this purpose.

2 ~~(45)(43)~~ projects to restore and reclaim lands that were strip-mined or underground-mined for coal and
3 not reclaimed in accordance with Title 82, chapter 4, part 2, and to abate or control adverse effects of strip or
4 underground mining on those lands."

5

6 **Section 4.** Section 76-12-108, MCA, is amended to read:

7 **"76-12-108. Acquisition of lands.** Subject to the limits of available appropriations, the board is
8 authorized to acquire interests in land by ~~any lawful means purchase, grant, deed, gift, or devise~~ for the
9 purpose of designating natural areas. ~~The board may exercise the power of eminent domain, provided for in~~
10 ~~Title 70, chapter 30, only in specific instances authorized by the legislature."~~

11

12 NEW SECTION. **Section 5. Codification instruction.** [Section 1] is intended to be codified as an
13 integral part of Title 70, chapter 30, part 1, and the provisions of Title 70, chapter 30, part 1, apply to [section 1].

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15 NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

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17 NEW SECTION. **Section 7. Applicability.** [This act] does not apply to condemnation proceedings
18 commenced pursuant to 70-30-206 before [the effective date of this act].

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