
SENATE BILL NO. 86— SENATORS LESLIE; BREEDEN, COPENING,
ROBERSON, SCHNEIDER, SETTELMAYER AND PARKS

PREFILED JANUARY 7, 2011

JOINT SPONSORS: ASSEMBLYMEN HORNE; AIZLEY, ANDERSON,
ATKINSON, BOBZIEN, CONKLIN, FLORES, FRIERSON,
HARDY, KIRKPATRICK, OCEGUERA, OHRENSCHALL,
PIERCE, SEGERBLOM AND SMITH

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing eminent domain.
(BDR 3-132)

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; removing the authorization of a person who is not a public agency to exercise the power of eminent domain to acquire real property for mining, smelting and related activities; eliminating the use of the power of eminent domain to acquire real property for pipelines of the beet sugar industry; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law authorizes the use of eminent domain to acquire real property for
2 certain public uses, including mining, smelting and related activities and pipelines
3 of the beet sugar industry. (NRS 37.010) This bill removes the authorization of a
4 person who is not a public agency to exercise the power of eminent domain for the
5 purposes of mining, smelting and related activities. This bill also eliminates an
6 obsolete provision that authorized the use of the power of eminent domain to
7 acquire real property for pipelines of the beet sugar industry.



* S B 8 6 R 1 *

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

1 **Section 1.** NRS 37.0095 is hereby amended to read as follows:
2 37.0095 1. Except as otherwise provided in subsection 2,
3 only a public agency may exercise the power of eminent domain
4 pursuant to the provisions of this chapter.

5 2. Except as otherwise provided in NRS 37.0097, the power of
6 eminent domain may be exercised by a person who is not a public
7 agency pursuant to NRS 37.230 and paragraphs ~~[(f), (h), (j), (m)]~~
8 ~~(g), (i), (k)~~ and ~~[(p)]~~ (n) of subsection 1 of NRS 37.010.

9 3. As used in this section, "public agency" means an agency or
10 political subdivision of this State or the United States.

11 **Sec. 2.** NRS 37.010 is hereby amended to read as follows:

12 37.010 1. Subject to the provisions of this chapter and the
13 limitations in subsections 2 and 3, the right of eminent domain may
14 be exercised in behalf of the following public uses:

15 (a) Federal activities. All public purposes authorized by the
16 Government of the United States.

17 (b) State activities. Public buildings and grounds for the use of
18 the State, the Nevada System of Higher Education and all other
19 public purposes authorized by the Legislature.

20 (c) County, city, town and school district activities. Public
21 buildings and grounds for the use of any county, incorporated city or
22 town, or school district, reservoirs, water rights, canals, aqueducts,
23 flumes, ditches or pipes for conducting water for the use of the
24 inhabitants of any county, incorporated city or town, for draining
25 any county, incorporated city or town, for raising the banks of
26 streams, removing obstructions therefrom, and widening, deepening
27 or straightening their channels, for roads, streets and alleys, and all
28 other public purposes for the benefit of any county, incorporated
29 city or town, or the inhabitants thereof.

30 (d) Bridges, toll roads, railroads, street railways and similar
31 uses. Wharves, docks, piers, chutes, booms, ferries, bridges, toll
32 roads, byroads, plank and turnpike roads, roads for transportation by
33 traction engines or locomotives, roads for logging or lumbering
34 purposes, and railroads and street railways for public transportation.

35 (e) Ditches, canals, aqueducts for smelting, domestic uses,
36 irrigation and reclamation. Reservoirs, dams, water gates, canals,
37 ditches, flumes, tunnels, aqueducts and pipes for supplying persons,
38 mines, mills, smelters or other works for the reduction of ores, with
39 water for domestic and other uses, for irrigating purposes, for
40 draining and reclaiming lands, or for floating logs and lumber on
41 streams not navigable.



- 1 (f) ~~Mining, smelting and related activities. Mining, smelting~~
2 ~~and related activities as follows:~~
3 —(1) ~~Mining and related activities, which are recognized as the~~
4 ~~paramount interest of this State.~~
5 —(2) ~~Roads, railroads, tramways, tunnels, ditches, flumes,~~
6 ~~pipes, reservoirs, dams, water gates, canals, aqueducts and dumping~~
7 ~~places to facilitate the milling, smelting or other reduction of ores,~~
8 ~~the working, reclamation or dewatering of mines, and for all mining~~
9 ~~purposes, outlets, natural or otherwise, for the deposit or conduct of~~
10 ~~tailings, refuse, or water from mills, smelters, or other work for the~~
11 ~~reduction of ores from mines, mill dams, pipelines, tanks or~~
12 ~~reservoirs for natural gas or oil, an occupaney in common by the~~
13 ~~owners or possessors of different mines, mills, smelters or other~~
14 ~~places for the reduction of ores, or any place for the flow, deposit or~~
15 ~~conduct of tailings or refuse matter and the necessary land upon~~
16 ~~which to erect smelters and to operate them successfully, including~~
17 ~~the deposit of fine flue dust, fumes and smoke.~~
18 —(g) ~~Byroads. Byroads leading from highways to residences and~~
19 ~~farms.~~
20 ~~(h)~~ (g) Public utilities. Lines for telegraph, telephone, electric
21 light and electric power and sites for plants for electric light and
22 power.
23 ~~(i)~~ (h) Sewerage. Sewerage of any city, town, settlement of
24 not less than 10 families or any public building belonging to the
25 State or college or university.
26 ~~(j)~~ (i) Water for generation and transmission of electricity.
27 Canals, reservoirs, dams, ditches, flumes, aqueducts and pipes for
28 supplying and storing water for the operation of machinery to
29 generate and transmit electricity for power, light or heat.
30 ~~(k)~~ (j) Cemeteries, public parks. Cemeteries or public parks.
31 ~~(l)~~ Pipelines of beet sugar industry. Pipelines to conduct any
32 liquids connected with the manufacture of beet sugar.
33 —(m) (k) Pipelines for petroleum products, natural gas. Pipelines
34 for the transportation of crude petroleum, petroleum products or
35 natural gas, whether interstate or intrastate.
36 ~~(n)~~ (l) Aviation. Airports, facilities for air navigation and
37 aerial rights-of-way.
38 ~~(o)~~ (m) Monorails. Monorails and any other overhead or
39 underground system used for public transportation.
40 ~~(p)~~ (n) Video service providers. Video service providers that
41 are authorized pursuant to chapter 711 of NRS to operate a video
42 service network. The exercise of the power of eminent domain may
43 include the right to use the wires, conduits, cables or poles of any
44 public utility if:



1 (1) It creates no substantial detriment to the service provided
2 by the utility;

3 (2) It causes no irreparable injury to the utility; and

4 (3) The Public Utilities Commission of Nevada, after giving
5 notice and affording a hearing to all persons affected by the
6 proposed use of the wires, conduits, cables or poles, has found that it
7 is in the public interest.

8 ~~(c)~~ (o) Redevelopment. The acquisition of property pursuant
9 to NRS 279.382 to 279.685, inclusive.

10 2. Notwithstanding any other provision of law and except as
11 otherwise provided in this subsection, the public uses for which
12 private property may be taken by the exercise of eminent domain do
13 not include the direct or indirect transfer of any interest in the
14 property to another private person or entity. Property taken by the
15 exercise of eminent domain may be transferred to another private
16 person or entity in the following circumstances:

17 (a) The entity that took the property transfers the property to a
18 private person or entity and the private person or entity uses the
19 property primarily to benefit a public service, including, without
20 limitation, a utility, railroad, public transportation project, pipeline,
21 road, bridge, airport or facility that is owned by a governmental
22 entity.

23 (b) The entity that took the property leases the property to a
24 private person or entity that occupies an incidental part of an airport
25 or a facility that is owned by a governmental entity and, before
26 leasing the property:

27 (1) Uses its best efforts to notify the person from whom the
28 property was taken that the property will be leased to a private
29 person or entity that will occupy an incidental part of an airport or
30 facility that is owned by a governmental entity; and

31 (2) Provides the person from whom the property was taken
32 with an opportunity to bid or propose on any such lease.

33 (c) The entity that took the property:

34 (1) Took the property in order to acquire property that was
35 abandoned by the owner, abate an immediate threat to the safety of
36 the public or remediate hazardous waste; and

37 (2) Grants a right of first refusal to the person from whom
38 the property was taken that allows that person to reacquire the
39 property on the same terms and conditions that are offered to the
40 other private person or entity.

41 (d) The entity that took the property exchanges it for other
42 property acquired or being acquired by eminent domain or under the
43 threat of eminent domain for roadway or highway purposes, to
44 relocate public or private structures or to avoid payment of
45 excessive compensation or damages.



1 (e) The person from whom the property is taken consents to the
2 taking.

3 3. The entity that is taking property by the exercise of eminent
4 domain has the burden of proving that the taking is for a public use.

5 4. For the purposes of this section, an airport authority or any
6 public airport is not a private person or entity.

7 **Sec. 3.** NRS 279.471 is hereby amended to read as follows:

8 279.471 1. Except as otherwise provided in this subsection,
9 an agency may exercise the power of eminent domain to acquire
10 property for a redevelopment project only if the agency adopts a
11 resolution that includes a written finding by the agency that a
12 condition of blight exists for each individual parcel of property to be
13 acquired by eminent domain. An agency may exercise the power of
14 eminent domain to acquire a parcel of property that is not blighted
15 for a redevelopment project if the agency adopts a resolution that
16 includes a written finding by the agency that a condition of blight
17 exists for at least two-thirds of the property within the
18 redevelopment area at the time the redevelopment area was created.

19 2. In addition to the requirement set forth in subsection 1, an
20 agency may exercise the power of eminent domain to acquire
21 property for a redevelopment project only if:

22 (a) The property sought to be acquired is necessary to carry out
23 the redevelopment plan;

24 (b) The agency has adopted a resolution of necessity that
25 complies with the requirements set forth in subsection 3; and

26 (c) The agency has complied with the provisions of
27 NRS 279.4712.

28 3. A resolution of necessity required pursuant to paragraph (b)
29 of subsection 2 must set forth:

30 (a) A statement that the property will be acquired for purposes
31 of redevelopment as authorized pursuant to paragraph ~~(c)~~ (d)
32 subsection 1 of NRS 37.010 and subsection 2 of NRS 279.470;

33 (b) A reasonably detailed description of the property to be
34 acquired;

35 (c) A finding by the agency that the public interest and necessity
36 require the acquisition of the property;

37 (d) A finding by the agency that acquisition of the property will
38 be the option for redevelopment that is most compatible with the
39 greatest public good and the least private injury; and

40 (e) A finding by the agency that acquisition of the property is
41 necessary for purposes of redevelopment.

42 4. After an agency adopts a resolution pursuant to subsection 1
43 or 2, the resolution so adopted and the findings set forth in the
44 resolution are final and conclusive and are not subject to judicial
45 review unless credible evidence is adduced to suggest that the



- 1 resolution or the findings set forth therein were procured through
- 2 bribery or fraud.
- 3 **Sec. 4.** This act becomes effective upon passage and approval.

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