

Amendment No. 109

Assembly Amendment to Senate Bill No. 86	(BDR 3-132)
<b>Proposed by:</b> Assembly Committee on Judiciary	
<b>Amends:</b> Summary: No Title: No Preamble: No Joint Sponsorship: Yes Digest: No	

ASSEMBLY ACTION		Initial and Date		SENATE ACTION		Initial and Date			
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) green bold italic underlining is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) green bold underlining is newly added transitory language.

NCA



Date: 4/21/2011

S.B. No. 86—Revises provisions governing eminent domain. (BDR 3-132)



SENATE BILL NO. 86- ~~SENATOR~~ 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 certain  
2 public uses, including mining, smelting and related activities and pipelines of the beet sugar  
3 industry. (NRS 37.010) This bill removes the authorization of a person who is not a public  
4 agency to exercise the power of eminent domain for the purposes of mining, smelting and  
5 related activities. This bill also eliminates an obsolete provision that authorized the use of the  
6 power of eminent domain to acquire real property for pipelines of the beet sugar industry.

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

1 3. As used in this section, “public agency” means an agency or political  
2 subdivision of this State or the United States.

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

4 37.010 1. Subject to the provisions of this chapter and the limitations in  
5 subsections 2 and 3, the right of eminent domain may be exercised in behalf of the  
6 following public uses:

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

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

12 (c) County, city, town and school district activities. Public buildings and  
13 grounds for the use of any county, incorporated city or town, or school district,  
14 reservoirs, water rights, canals, aqueducts, flumes, ditches or pipes for conducting  
15 water for the use of the inhabitants of any county, incorporated city or town, for  
16 draining any county, incorporated city or town, for raising the banks of streams,  
17 removing obstructions therefrom, and widening, deepening or straightening their  
18 channels, for roads, streets and alleys, and all other public purposes for the benefit  
19 of any county, incorporated city or town, or the inhabitants thereof.

20 (d) Bridges, toll roads, railroads, street railways and similar uses. Wharves,  
21 docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike  
22 roads, roads for transportation by traction engines or locomotives, roads for logging  
23 or lumbering purposes, and railroads and street railways for public transportation.

24 (e) Ditches, canals, aqueducts for smelting, domestic uses, irrigation and  
25 reclamation. Reservoirs, dams, water gates, canals, ditches, flumes, tunnels,  
26 aqueducts and pipes for supplying persons, mines, mills, smelters or other works  
27 for the reduction of ores, with water for domestic and other uses, for irrigating  
28 purposes, for draining and reclaiming lands, or for floating logs and lumber on  
29 streams not navigable.

30 (f) ~~Mining, smelting and related activities. Mining, smelting and related~~  
31 ~~activities as follows:~~

32 ~~—— (1) Mining and related activities, which are recognized as the paramount~~  
33 ~~interest of this State:~~

34 ~~—— (2) Roads, railroads, tramways, tunnels, ditches, flumes, pipes, reservoirs,~~  
35 ~~dams, water gates, canals, aqueducts and dumping places to facilitate the milling,~~  
36 ~~smelting or other reduction of ores, the working, reclamation or dewatering of~~  
37 ~~mines, and for all mining purposes, outlets, natural or otherwise, for the deposit or~~  
38 ~~conduct of tailings, refuse, or water from mills, smelters, or other work for the~~  
39 ~~reduction of ores from mines, mill dams, pipelines, tanks or reservoirs for natural~~  
40 ~~gas or oil, an occupaney in common by the owners or possessors of different mines,~~  
41 ~~mills, smelters or other places for the reduction of ores, or any place for the flow,~~  
42 ~~deposit or conduct of tailings or refuse matter and the necessary land upon which to~~  
43 ~~erect smelters and to operate them successsfully, including the deposit of fine flue~~  
44 ~~dust, fumes and smoke.~~

45 ~~—— (g) Byroads. Byroads leading from highways to residences and farms.~~

46 ~~{(h)}~~ (g) Public utilities. Lines for telegraph, telephone, electric light and  
47 electric power and sites for plants for electric light and power.

48 ~~{(i)}~~ (h) Sewerage. Sewerage of any city, town, settlement of not less than 10  
49 families or any public building belonging to the State or college or university.

50 ~~{(j)}~~ (i) Water for generation and transmission of electricity. Canals,  
51 reservoirs, dams, ditches, flumes, aqueducts and pipes for supplying and storing  
52 water for the operation of machinery to generate and transmit electricity for power,  
53 light or heat.

1 ~~[(k)]~~ (j) Cemeteries, public parks. Cemeteries or public parks.

2 ~~[(l)] Pipelines of beet sugar industry. Pipelines to conduct any liquids connected~~  
3 ~~with the manufacture of beet sugar.~~

4 ~~—(m)]~~ (k) Pipelines for petroleum products, natural gas. Pipelines for the  
5 transportation of crude petroleum, petroleum products or natural gas, whether  
6 interstate or intrastate.

7 ~~[(n)]~~ (l) Aviation. Airports, facilities for air navigation and aerial rights-of-  
8 way.

9 ~~[(o)]~~ (m) Monorails. Monorails and any other overhead or underground system  
10 used for public transportation.

11 ~~[(p)]~~ (n) Video service providers. Video service providers that are authorized  
12 pursuant to chapter 711 of NRS to operate a video service network. The exercise of  
13 the power of eminent domain may include the right to use the wires, conduits,  
14 cables or poles of any public utility if:

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

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

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

20 ~~[(q)]~~ (o) Redevelopment. The acquisition of property pursuant to NRS  
21 279.382 to 279.685, inclusive.

22 2. Notwithstanding any other provision of law and except as otherwise  
23 provided in this subsection, the public uses for which private property may be taken  
24 by the exercise of eminent domain do not include the direct or indirect transfer of  
25 any interest in the property to another private person or entity. Property taken by  
26 the exercise of eminent domain may be transferred to another private person or  
27 entity in the following circumstances:

28 (a) The entity that took the property transfers the property to a private person  
29 or entity and the private person or entity uses the property primarily to benefit a  
30 public service, including, without limitation, a utility, railroad, public transportation  
31 project, pipeline, road, bridge, airport or facility that is owned by a governmental  
32 entity.

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

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

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

42 (c) The entity that took the property:

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

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

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

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

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

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

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

6           279.471 1. Except as otherwise provided in this subsection, an agency may  
7 exercise the power of eminent domain to acquire property for a redevelopment  
8 project only if the agency adopts a resolution that includes a written finding by the  
9 agency that a condition of blight exists for each individual parcel of property to be  
10 acquired by eminent domain. An agency may exercise the power of eminent  
11 domain to acquire a parcel of property that is not blighted for a redevelopment  
12 project if the agency adopts a resolution that includes a written finding by the  
13 agency that a condition of blight exists for at least two-thirds of the property within  
14 the redevelopment area at the time the redevelopment area was created.

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

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

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

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

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

25           (a) A statement that the property will be acquired for purposes of  
26 redevelopment as authorized pursuant to paragraph ~~(c)~~ (d) of subsection 1 of NRS  
27 37.010 and subsection 2 of NRS 279.470;

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

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

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

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

36           4. After an agency adopts a resolution pursuant to subsection 1 or 2, the  
37 resolution so adopted and the findings set forth in the resolution are final and  
38 conclusive and are not subject to judicial review unless credible evidence is  
39 adduced to suggest that the resolution or the findings set forth therein were  
40 procured through bribery or fraud.

41           **Sec. 4.** This act becomes effective upon passage and approval.