

SENATE BILL NO. 86—SENATOR LESLIE

PREFILED JANUARY 7, 2011

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.

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



1 agency pursuant to NRS 37.230 and paragraphs ~~[(f), (h), (j), (m)]~~
2 ~~(g), (i), (k)~~ and ~~[(p)]~~ (n) of subsection 1 of NRS 37.010.

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

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

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

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

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

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

24 (d) Bridges, toll roads, railroads, street railways and similar
25 uses. Wharves, docks, piers, chutes, booms, ferries, bridges, toll
26 roads, byroads, plank and turnpike roads, roads for transportation by
27 traction engines or locomotives, roads for logging or lumbering
28 purposes, and railroads and street railways for public transportation.

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

36 (f) ~~[(Mining, smelting and related activities. Mining, smelting~~
37 ~~and related activities as follows:~~

38 ~~— (1) Mining and related activities, which are recognized as the~~
39 ~~paramount interest of this State.~~

40 ~~— (2) Roads, railroads, tramways, tunnels, ditches, flumes,~~
41 ~~pipes, reservoirs, dams, water gates, canals, aqueducts and dumping~~
42 ~~places to facilitate the milling, smelting or other reduction of ores,~~
43 ~~the working, reclamation or dewatering of mines, and for all mining~~
44 ~~purposes, outlets, natural or otherwise, for the deposit or conduct of~~
45 ~~tailings, refuse, or water from mills, smelters, or other work for the~~



~~1 reduction of ores from mines, mill dams, pipelines, tanks or
2 reservoirs for natural gas or oil, an occupancy in common by the
3 owners or possessors of different mines, mills, smelters or other
4 places for the reduction of ores, or any place for the flow, deposit or
5 conduct of tailings or refuse matter and the necessary land upon
6 which to erect smelters and to operate them successfully, including
7 the deposit of fine flue dust, fumes and smoke.~~

~~8 —(g)}~~ Byroads. Byroads leading from highways to residences and
9 farms.

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

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

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

20 ~~{(k)}~~ (j) Cemeteries, public parks. Cemeteries or public parks.

21 ~~{(l)}~~ Pipelines of beet sugar industry. Pipelines to conduct any
22 liquids connected with the manufacture of beet sugar.

23 ~~—(m)}~~ (k) Pipelines for petroleum products, natural gas. Pipelines
24 for the transportation of crude petroleum, petroleum products or
25 natural gas, whether interstate or intrastate.

26 ~~{(n)}~~ (l) Aviation. Airports, facilities for air navigation and
27 aerial rights-of-way.

28 ~~{(o)}~~ (m) Monorails. Monorails and any other overhead or
29 underground system used for public transportation.

30 ~~{(p)}~~ (n) Video service providers. Video service providers that
31 are authorized pursuant to chapter 711 of NRS to operate a video
32 service network. The exercise of the power of eminent domain may
33 include the right to use the wires, conduits, cables or poles of any
34 public utility if:

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

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

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

42 ~~{(q)}~~ (o) Redevelopment. The acquisition of property pursuant
43 to NRS 279.382 to 279.685, inclusive.

44 2. Notwithstanding any other provision of law and except as
45 otherwise provided in this subsection, the public uses for which



1 private property may be taken by the exercise of eminent domain do
2 not include the direct or indirect transfer of any interest in the
3 property to another private person or entity. Property taken by the
4 exercise of eminent domain may be transferred to another private
5 person or entity in the following circumstances:

6 (a) The entity that took the property transfers the property to a
7 private person or entity and the private person or entity uses the
8 property primarily to benefit a public service, including, without
9 limitation, a utility, railroad, public transportation project, pipeline,
10 road, bridge, airport or facility that is owned by a governmental
11 entity.

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

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

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

22 (c) The entity that took the property:

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

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

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

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

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

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

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

42 279.471 1. Except as otherwise provided in this subsection,
43 an agency may exercise the power of eminent domain to acquire
44 property for a redevelopment project only if the agency adopts a
45 resolution that includes a written finding by the agency that a



1 condition of blight exists for each individual parcel of property to be
2 acquired by eminent domain. An agency may exercise the power of
3 eminent domain to acquire a parcel of property that is not blighted
4 for a redevelopment project if the agency adopts a resolution that
5 includes a written finding by the agency that a condition of blight
6 exists for at least two-thirds of the property within the
7 redevelopment area at the time the redevelopment area was created.

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

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

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

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

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

19 (a) A statement that the property will be acquired for purposes
20 of redevelopment as authorized pursuant to paragraph ~~(a)~~ (o) of
21 subsection 1 of NRS 37.010 and subsection 2 of NRS 279.470;

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

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

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

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

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

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

