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ASSEMBLY BILL NO. 186—ASSEMBLYMEN GOEDHART; HAMBRICK,  
HANSEN, HARDY, KIRNER, MCARTHUR, SHERWOOD,  
STEWART AND WOODBURY

FEBRUARY 17, 2011

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JOINT SPONSORS: SENATORS CEGAVSKE, GUSTAVSON,  
HALSETH AND ROBERSON

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Referred to Committee on Judiciary

SUMMARY—Allows certain real property managed or controlled  
by the Federal Government to be taken by eminent  
domain for certain purposes. (BDR 3-373)

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.

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AN ACT relating to eminent domain; allowing certain real property  
managed or controlled by the Federal Government to be  
taken by eminent domain for certain purposes; and  
providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

1 Existing law sets forth the provisions pursuant to which property may be  
2 acquired in Nevada using the power of eminent domain. (Chapter 37 of NRS)  
3 Pursuant to those provisions, the power of eminent domain may be exercised to  
4 acquire property for certain public uses, including, without limitation: (1) federal,  
5 state, county, city, town and school district activities; and (2) sites for plants for  
6 electric light and power. (NRS 37.010) In general, the power of eminent domain  
7 may be exercised only by a public agency. However, a person who is not a public  
8 agency may exercise the power of eminent domain for the purposes of mining  
9 activities, operating a public utility, obtaining water to generate and transmit  
10 electricity, transporting petroleum products or natural gas and operating a video  
11 service network. (NRS 37.0095)

12 The United States Constitution authorizes the Congress of the United States to  
13 dispose of and make all needful rules and regulations concerning the territory and  
14 other property belonging to the United States. (U.S. Const. Art. IV, § 3, cl. 2) In  
15 addition, the United States Constitution authorizes the Congress of the United  
16 States to exercise exclusive jurisdiction over all places within a state that are  
17 purchased with the consent of the legislature of that state for the erection of forts,



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18 magazines, arsenals, dockyards and other needful buildings. (U.S. Const. Art. I, § 8,  
19 cl. 17)

20 **Section 1** of this bill allows all real property managed or controlled by the  
21 Federal Government, other than property owned by the Federal Government in  
22 accordance with the provisions of Clause 17 of Section 8 of Article I of the United  
23 States Constitution, to be taken by eminent domain if the property is used to  
24 construct and maintain a renewable energy generation project or any other project  
25 that uses renewable energy to generate and transmit electricity.

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

1 **Section 1.** Chapter 37 of NRS is hereby amended by adding  
2 thereto a new section to read as follows:

3 *1. All real property managed or controlled by the Federal*  
4 *Government, other than real property owned by the Federal*  
5 *Government in accordance with Clause 17 of Section 8 of Article I*  
6 *of the Constitution of the United States, may be taken under this*  
7 *chapter if the real property is used for:*

8 *(a) The construction and maintenance of a renewable energy*  
9 *generation project or any other project that uses renewable energy*  
10 *to generate electricity; or*

11 *(b) Any related transmission line or similar appurtenance*  
12 *required for the project.*

13 **2. As used in this section:**

14 *(a) "Renewable energy" has the meaning ascribed to it in*  
15 *NRS 278.0173.*

16 *(b) "Renewable energy generation project" has the meaning*  
17 *ascribed to it in NRS 278.01735.*

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

19 37.010 1. Subject to the provisions of this chapter and the  
20 limitations *set forth* in subsections 2 and 3, *and except as otherwise*  
21 *provided in section 1 of this act*, the right of eminent domain may  
22 be exercised in behalf of the following public uses:

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

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

28 (c) County, city, town and school district activities. Public  
29 buildings and grounds for the use of any county, incorporated city or  
30 town, or school district, reservoirs, water rights, canals, aqueducts,  
31 flumes, ditches or pipes for conducting water for the use of the  
32 inhabitants of any county, incorporated city or town, for draining  
33 any county, incorporated city or town, for raising the banks of  
34 streams, removing obstructions therefrom, and widening, deepening



1 or straightening their channels, for roads, streets and alleys, and all  
2 other public purposes for the benefit of any county, incorporated  
3 city or town, or the inhabitants thereof.

4 (d) Bridges, toll roads, railroads, street railways and similar  
5 uses. Wharves, docks, piers, chutes, booms, ferries, bridges, toll  
6 roads, byroads, plank and turnpike roads, roads for transportation by  
7 traction engines or locomotives, roads for logging or lumbering  
8 purposes, and railroads and street railways for public transportation.

9 (e) Ditches, canals, aqueducts for smelting, domestic uses,  
10 irrigation and reclamation. Reservoirs, dams, water gates, canals,  
11 ditches, flumes, tunnels, aqueducts and pipes for supplying persons,  
12 mines, mills, smelters or other works for the reduction of ores, with  
13 water for domestic and other uses, for irrigating purposes, for  
14 draining and reclaiming lands, or for floating logs and lumber on  
15 streams not navigable.

16 (f) Mining, smelting and related activities. Mining, smelting and  
17 related activities as follows:

18 (1) Mining and related activities, which are recognized as the  
19 paramount interest of this State.

20 (2) Roads, railroads, tramways, tunnels, ditches, flumes,  
21 pipes, reservoirs, dams, water gates, canals, aqueducts and dumping  
22 places to facilitate the milling, smelting or other reduction of ores,  
23 the working, reclamation or dewatering of mines, and for all mining  
24 purposes, outlets, natural or otherwise, for the deposit or conduct of  
25 tailings, refuse, or water from mills, smelters, or other work for the  
26 reduction of ores from mines, mill dams, pipelines, tanks or  
27 reservoirs for natural gas or oil, an occupancy in common by the  
28 owners or possessors of different mines, mills, smelters or other  
29 places for the reduction of ores, or any place for the flow, deposit or  
30 conduct of tailings or refuse matter and the necessary land upon  
31 which to erect smelters and to operate them successfully, including  
32 the deposit of fine flue dust, fumes and smoke.

33 (g) Byroads. Byroads leading from highways to residences and  
34 farms.

35 (h) Public utilities. Lines for telegraph, telephone, electric light  
36 and electric power and sites for plants for electric light and power.

37 (i) Sewerage. Sewerage of any city, town, settlement of not less  
38 than 10 families or any public building belonging to the State or  
39 college or university.

40 (j) Water for generation and transmission of electricity. Canals,  
41 reservoirs, dams, ditches, flumes, aqueducts and pipes for supplying  
42 and storing water for the operation of machinery to generate and  
43 transmit electricity for power, light or heat.

44 (k) Cemeteries, public parks. Cemeteries or public parks.



1 (l) Pipelines of beet sugar industry. Pipelines to conduct any  
2 liquids connected with the manufacture of beet sugar.

3 (m) Pipelines for petroleum products, natural gas. Pipelines for  
4 the transportation of crude petroleum, petroleum products or natural  
5 gas, whether interstate or intrastate.

6 (n) Aviation. Airports, facilities for air navigation and aerial  
7 rights-of-way.

8 (o) Monorails. Monorails and any other overhead or  
9 underground system used for public transportation.

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

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

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

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

22 (q) Redevelopment. The acquisition of property pursuant to  
23 NRS 279.382 to 279.685, inclusive.

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

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

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

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



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

3 (c) The entity that took the property:

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

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

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

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

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

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

22 **Sec. 3.** NRS 37.100 is hereby amended to read as follows:

23 37.100 1. Before the plaintiff obtains possession of the  
24 property, the plaintiff shall give to the owner of the property a copy  
25 of all appraisals of the property obtained by the plaintiff.

26 2. The plaintiff may move the court or a judge thereof at any  
27 time after the commencement of suit, on notice for such time as the  
28 court or judge may direct to the defendant if the defendant is a  
29 resident of the county or has appeared in the action, otherwise by  
30 serving a notice directed to the defendant on the clerk of the court,  
31 for an order permitting the plaintiff to occupy the premises sought to  
32 be condemned, pending the entry of judgment, and to do such work  
33 thereon as may be required for the easement, fee or property rights  
34 sought, according to its nature.

35 3. At the occupancy hearing, the court shall make a separate  
36 and distinct determination as to whether the property is being taken  
37 for a public use pursuant to NRS 37.010, *or section 1 of this act*, if  
38 the defendant requests such a determination.

39 4. If the defendant does not request a determination pursuant to  
40 subsection 3 or if the court determines that the property is being  
41 taken for a public use pursuant to NRS 37.010, *or section 1 of this*  
42 *act*, the court or judge shall take proof, by affidavit or otherwise, of  
43 the value of the premises sought to be condemned, the damages  
44 which will accrue from the condemnation and the reasons for  
45 requiring a speedy occupation, and shall grant or refuse the motion



1 according to the equity of the case and the relative damages which  
2 may accrue to the parties.

3 5. If the motion is granted, the court or judge shall require the  
4 plaintiff to execute and file in court a bond to the defendant, with  
5 sureties, to be approved by the court or judge in a penal sum to be  
6 fixed by the court or judge, not less than double the value of the  
7 premises sought to be condemned and the damages which will ensue  
8 from condemnation and occupation, as the value and damages may  
9 appear to the court or judge on the hearing, and conditioned to pay  
10 the adjudged value of the premises and all damages if the property is  
11 condemned, and to pay all damages arising from occupation before  
12 judgment if the premises are not condemned, and all costs adjudged  
13 to the defendant in the action. The sureties shall justify before the  
14 court or judge, after a reasonable notice to the defendant of the time  
15 and place of justification.

16 6. In lieu of a bond the plaintiff, with the consent of the court,  
17 may deposit with the clerk of the court a sum equal to the value of  
18 the premises plus damages, as appraised by the plaintiff. Upon  
19 application of the defendant and upon notice to all parties, the court  
20 or judge may order the money deposited with the clerk of the court  
21 or any part thereof to be paid to the defendant. If the amount of the  
22 compensation awarded upon judgment is less than the sum  
23 deposited and paid to the defendant, the court shall enter judgment  
24 in favor of the plaintiff and against the defendant for the amount of  
25 the excess. Application by the defendant to the court for withdrawal  
26 of part or all of the money deposited and the payment of that money  
27 to the defendant does not prejudice the right of the defendant to  
28 contest the amount of compensation to be finally awarded. The  
29 receipt by the defendant of a part or all of the money deposited must  
30 be conditioned upon the waiver of all defenses except those relating  
31 to the amount of compensation.

32 7. The amount of the penal bond or the deposit is for the  
33 purpose of the motion only and is not admissible in evidence on  
34 final hearing.

35 8. The court or judge may also restrain the defendant from  
36 hindering or interfering with the occupation of the premises and the  
37 doing thereon of the work required for the easement, fee or property  
38 rights.

39 9. The provisions of this section requiring the execution and  
40 filing of a bond do not apply in any action or proceeding in which  
41 the State of Nevada is the plaintiff, but the public faith and credit of  
42 the State of Nevada is hereby pledged as security in lieu of the bond.  
43 The provisions of this subsection do not prevent the State of Nevada  
44 from depositing, in lieu of a pledge of the public faith and credit,



- 1 with the clerk of the court a sum equal to the value of the premises
- 2 plus any damages as appraised by the State.
- 3 **Sec. 4.** This act becomes effective on July 1, 2011.

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