Summary

This bill authorizes the state to exercise eminent domain authority on property possessed by the federal government unless the property was acquired by the federal government with the consent of the Legislature and in accordance with the United States Constitution Article I, Section 8, Clause 17.

Legislation

Section 1.

The following shall be enacted as Section ______ of the eminent domain provisions of the State Code:

Other Property which may be taken - State as plaintiff.

(1) Subject to Subsection (2), property which may be taken under this part includes property possessed by the federal government unless the property was acquired by the federal government with the consent of the Legislature and in accordance with the United States Constitution Article I, Section 8, Clause 17.

(2) The state shall be the plaintiff described in the eminent domain complaint in an action to condemn property described in Subsection (1).


From CMD: This "model" legislation would authorize state governments to appropriate federal public land, such as national parks and wilderness areas belonging to the American people, likely to allow greater oil, gas, and coal exploration to benefit energy corporations. It would have a major impact in Western states, all of which have significant areas of federal "public land" many of which are "trust lands." The only federally-owned land exempted from the state's use of eminent domain power is for land attained through the U.S. Congress' use of the "Enclave Clause" of the Constitution (Art. I, Sec. 8, Cl. 17), which allows the federal government the right to "purchas[e] by the Consent of the Legislature of the State" land for enumerated purposes, such as military structures and "other needful Buildings." On the other hand, in Kleppe v. New Mexico (1976), the U.S. Supreme Court held that Congress has broader authority to enact legislation to manage federal land under the "Property Clause" (Art. 1 Sec. 3 Cl. 2), and that legislation would override state legislation under the Supremacy Clause (Art. VI Cl. 2). This bill aims to reverse the U.S. Supreme Court's constitutional interpretation.

This bill may be related to a 2009 law in Utah, where 60% of land is owned by the federal government, and where the Clinton Administration established several national monuments for conservation purposes (and more recently, where the Department of the Interior canceled some oil and natural gas leases). Similar bills have been introduced in Western states such as Nevada, Arizona, and Wyoming.