

HOUSE BILL NO. 420

INTRODUCED BY J. SHOCKLEY

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A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT A ~~CONDEMNOR~~ PERSON CONDEMNOR IN AN EMINENT DOMAIN ACTION PROVIDE THE ~~CONDEMNOR~~ PROPERTY OWNER CONDEMNOR WITH A STATEMENT OF THE ~~CONDEMNOR'S~~ PROPERTY OWNER'S CONDEMNOR'S RIGHTS IN AN EMINENT DOMAIN ACTION; REQUIRING THAT THE CONDEMNOR SHOW BY A PREPONDERANCE OF THE EVIDENCE THAT THE CONDEMNOR INFORMED THE CONDEMNOR OF THE CONDEMNOR'S RIGHTS THROUGH AN EMINENT DOMAIN STATEMENT OF RIGHTS; ~~EXPANDING THE INSTANCES IN WHICH THE CONDEMNOR IS ENTITLED TO ATTORNEY FEES; DEFINING "NECESSARY EXPENSES" AND WHEN NECESSARY EXPENSES ACCRUE;~~ AMENDING SECTION 70-30-111, 70-30-305, ~~AND 70-30-306~~, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Condemnee's rights in eminent domain action. (1) ~~The condemnor in an eminent domain action is required to provide the condemnee with a statement of the condemnee's rights in an eminent domain action. A PERSON AUTHORIZED BY LAW TO ACQUIRE A PROPERTY INTEREST THROUGH THE RIGHT OF EMINENT DOMAIN IS REQUIRED TO PROVIDE THE PROPERTY OWNER WITH A STATEMENT OF THE PROPERTY OWNER'S RIGHTS IF AN EMINENT DOMAIN ACTION OCCURS~~ THE CONDEMNOR IN AN EMINENT DOMAIN ACTION IS REQUIRED TO PROVIDE THE CONDEMNOR WITH A STATEMENT OF THE CONDEMNOR'S RIGHTS IN AN EMINENT DOMAIN ACTION.

- (2) The eminent domain statement of rights must:
 - (a) be in writing;
 - (b) be signed by the condemnee or the person who provided the condemnee with the eminent domain statement of rights;
 - ~~(c) be recorded with the clerk and recorder of the county within which the property subject to condemnation is located; and~~
 - ~~(d)~~(c) include but is not limited to the following information:
 - (i) the condemnee's right to not accept the offer submitted by the condemnor;
 - ~~(ii) the condemnee's entitlement to attorney fees if the condemnee prevails, as provided in Article~~



1 ~~II, section 29, of the Montana constitution and 70-30-305;~~
 2 ~~(iii)(ii) the location of eminent domain laws in the Montana Code Annotated; AND~~
 3 ~~(iv)(iii) the rights granted to a condemnee under Article II, section 29, of the Montana constitution;~~
 4 ~~and~~
 5 ~~(v) sources of information related to eminent domain on state and federal levels.~~

6 (3) Additional documents regarding the eminent domain action may not be recorded and a sale
 7 may not be made until 30 DAYS AFTER the eminent domain statement of rights has been recorded for 30
 8 days PROVIDED TO THE CONDEMNEE.

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10 **Section 2.** Section 70-30-111, MCA, is amended to read:

11 **"70-30-111. Facts necessary to be found before condemnation.** Before property ~~can~~ may be
 12 taken, the ~~plaintiff must~~ condemnor shall show by a preponderance of the evidence that the public interest
 13 requires the taking based on all of the following findings:

14 (1) ~~that the~~ The use to which ~~it~~ the property is to be applied is a use authorized by law;

15 (2) ~~that the~~ The taking is necessary to ~~such~~ the use;

16 (3) ~~if~~ If already ~~appropriated to some~~ being used for a public use, ~~that~~ the public use ~~to~~ for which
 17 ~~it~~ the property is ~~proposed~~ proposed to be ~~applied~~ used is a more necessary public use;

18 (4) ~~that an~~ An effort to obtain the property interest sought to be ~~condemned~~ taken was made by
 19 submission of a written offer, ~~and that such~~ the offer was rejected.

20 (5) The condemnor informed the condemnee of the condemnee's rights through the eminent
 21 domain statement of rights provided for in [section 1]."

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23 ~~Section 3.~~ Section 70-30-305, MCA, is amended to read:

24 ~~"70-30-305. Condemnor to make offer upon appeal -- award of necessary expenses of litigation.~~

25 (1) ~~The~~ condemnor shall, within 30 days after an appeal is perfected from the condemnation
 26 commissioner's award or report or not more than 60 days after the waiver of appointment of
 27 condemnation commissioners, submit to the condemnee a written final offer of judgment for the property
 28 sought to be condemned taken, together with the accrued necessary expenses of the condemnee then
 29 accrued as provided in 70-30-306. If at any time prior to 10 days before trial the condemnee serves
 30 written notice that the offer is accepted, either party may then file the offer and notice of acceptance;

1 together with proof of service thereof ~~of the acceptance~~, and thereupon judgment shall must be entered.
 2 An offer not accepted shall be deemed is considered withdrawn, and evidence thereof of the offer is not
 3 admissible at the trial except in a proceeding to determine costs. The fact that an offer is made but not
 4 accepted does not preclude a subsequent offer.

5 ~~———— (2) In the event of litigation, the court shall award necessary expenses to the condemnee, as
 6 provided in 70-30-306, and when the private property owner condemnee prevails by:~~

7 ~~———— (a) receiving an award in excess of the final offer of the condemnor,;~~

8 ~~———— (b) decreasing the amount of property that the condemnor is allowed to take;~~

9 ~~———— (c) requiring that the condemnor take a different interest in property than was originally sought;~~

10 ~~or~~

11 ~~———— (d) requiring the condemnor to follow a different route than proposed in the preliminary
 12 condemnation order the court shall award necessary expenses of litigation to the condemnee."~~

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14 ~~———— **Section 4.** Section 70-30-306, MCA, is amended to read:~~

15 ~~———— "**70-30-306. Necessary expenses of litigation defined.** (1) Necessary expenses of litigation
 16 "Necessary expenses", as authorized by 70-30-305, mean means reasonable and necessary attorney fees,
 17 expert witness fees, exhibit costs expenses incurred in anticipation of litigation or as a result of litigation,
 18 and court costs.~~

19 ~~———— (2) Reasonable and necessary attorney fees are the customary hourly rates for an attorney's
 20 services in the county in which the trial is held. Reasonable and necessary attorney fees shall must be
 21 computed on an hourly basis and may not be computed on the basis of any contingent fee contract
 22 entered into after July 1, 1977.~~

23 ~~———— (3) Reasonable and necessary expert witness fees may not exceed the customary rate for the
 24 services of a witness of such that expertise in the county in which the trial is held;~~

25 ~~———— (4) Necessary expenses accrue after the first offer of purchase by the condemnor."~~

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27 NEW SECTION. Section 3. Codification instruction. [Section 1] is intended to be codified as an
 28 integral part of Title 70, chapter 30, part 1, and the provisions of Title 70, chapter 30, part 1, apply to
 29 [section 1].

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