EXHIBIT 10
DATE 3/24/11
HB 240

EXHIBIT 20
DATE 3/23/11
HB 240

Amendments to House Bill No. 240
2nd Reading Copy

Requested by Representative Kelly Flynn

For the House Taxation Committee

Prepared by Sonja Nowakowski
March 22, 2011 (2:15pm)

1. Title, page 1, line 5.
Strike: "CONDEMNOR'S"
Following: "OFFER"
Insert: "BY THE STATE OR ITS AGENT"

2. Title, page 1, line 8 through line 9.
Strike: "PROVIDING" on line 8 through "USED;" on line 9

3. Title, page 1, line 9.
Following: "70-30-111,"
Strike: "AND"
Following: "70-30-305,"
Insert: "AND 70-30-311,"

4. Page 1, line 14 through page 7, line 1.
Strike: everything after the enacting clause
Insert: "Section 1. Section 70-30-101, MCA, is amended to read:

"70-30-101. Eminent domain ~~defined~~ -- definitions. (1) Eminent domain is the right of the state to take private property for public use. This right may be exercised in the manner provided in this chapter.

(2) As used in this chapter, unless the context indicates otherwise, the following definitions apply:

(a) "Appraisal" means a written statement, independently and impartially prepared by a certified real estate appraiser as defined in 37-54-102 with a minimum of 5 years of experience, setting forth an opinion of defined value of an adequately described property or property interest on a specific date and supported by the presentation and analysis of relevant market information.

(b) "Final written offer" means the last written offer presented to the property owner at least 30 days before service of process in a civil action pursuant to 70-30-202.

(c) "Negotiation" means a communication process of give-and-take discussions between parties."

{*Internal References to 70-30-101: None.*}"

Insert: "Section 2. Section 70-30-110, MCA, is amended to read:

"70-30-110. Survey and location of property to be taken -- greatest public good -- least private injury. (1) In all cases in which land is required for public use, the state or its agents in

charge of the public use may survey and locate the land to be used. The use must be located in the manner that will be most compatible with the greatest public good and the least private injury, and the location is subject to the provisions of 70-30-206. The state or its agents in charge of the public use may, after giving 30 days' written notice to the owners and persons in possession of the land, enter upon the land and make examination, surveys, and maps of the land. The entry does not constitute a cause of action in favor of the owners of the land except from injuries resulting from negligence or intentional acts. Upon written request of the state or its agents, the owner shall provide the names and addresses of all persons who are in possession of the owner's land within 14 days from receipt of the written notice. The state or its agents shall within 14 days from receipt of that information furnish written notice to the listed persons. The notice to the listed persons must be sent to the address provided by the owner, and if the owner fails to provide the address then there is no obligation to send the notice unless the state or its agent otherwise has an address for the listed person. The notice to the listed persons does not affect the deadline of the original 30 days' notice or the right of the state or its agent to enter upon the land upon the expiration of the 30 days.

(2) Prior to or at the time of rejection of the final written offer as referred to in ~~70-30-111(4)~~ 70-30-111(1)(d), the condemnee may provide to the condemnor the condemnee's claim of appropriate measures that the condemnee considers necessary to minimize damages to the property directly affected by the project as well as to minimize damages incurred to the remaining parcel of property."

{*Internal References to 70-30-110: None.*}"

Insert: "Section 3. Section 70-30-111, MCA, is amended to read:

"70-30-111. Facts necessary to be found before condemnation. (1) Before property can be taken, the condemnor shall show by a preponderance of the evidence that the public interest requires the taking based on the following findings:

~~(1)~~(a) the use to which the property is to be applied is a public use pursuant to 70-30-102;

~~(2)~~(b) the taking is necessary to the public use;

~~(3)~~(c) if already being used for a public use, that the public use for which the property is proposed to be used is a more necessary public use;

~~(4)~~(d) ~~an effort to obtain the property interest sought to be taken was made by submission of a written offer and the offer was rejected.~~ a final written offer of just compensation was made and the property owner was given at least 30 days to provide a written acceptance or rejection of the offer in accordance with subsection (2); and

(e) the appraisal, negotiation, and other condemnation procedures required pursuant to [section 6] have been satisfied.

(2)(a) The written offer must be sent by certified mail to the owner's property tax address unless the owner has advised the state or its agent in writing of a different address for notices for purposes of the negotiations.

(b) A written offer is considered rejected if no written acceptance is received within 30 days after its delivery."

{*Internal References to 70-30-111:*
70-30-110 70-30-203 70-30-206 }"

Insert: "Section 4. Section 70-30-305, MCA, is amended to read:

"70-30-305. Condemnor to make offer upon appeal -- award of expenses of litigation. (1) The condemnor shall, within 30 days after an appeal is perfected from the condemnation commissioner's award or report or not more than 60 days after the waiver of appointment of commissioners, submit to the condemnee a written final offer of judgment for the property sought to be taken, together, if the award was in excess of the final written offer as provided in 70-30-111(1)(d), with the accrued necessary expenses of the condemnee. If at any time prior to 10 days before trial the condemnee serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with proof of service of the acceptance, and judgment must be entered. An offer not accepted is considered withdrawn and evidence of the offer is not admissible at the trial except in a proceeding to determine costs. The fact that an offer is made but not accepted does not preclude a subsequent offer.

(2) In the event of litigation and when the condemnee prevails by receiving an award in excess of the final ~~offer of the condemnor~~ written offer as provided in 70-30-111(1)(d), the court shall award necessary expenses of litigation to the condemnee."

{*Internal References to 70-30-305:*
70-30-306 }"

Insert: "Section 5. Section 70-30-311, MCA, is amended to read:

"70-30-311. Putting condemnor in possession. (1) At any time after the filing of the preliminary condemnation order pursuant to 70-30-206 or an order as provided in 60-4-104(4) and (5) and while it retains jurisdiction, the court upon application of the condemnor may make an order that:

(a) upon payment into court of the amount of compensation claimed by the condemnee in the condemnee's statement of claim of just compensation under 70-30-207, ~~or~~ the amount assessed either by the commissioners or by the jury, or 125% of the amount of the condemnor's final written offer pursuant to [section 6(8)], the condemnor is authorized:

(i) if already in possession of the property of the condemnee that is sought to be taken, to continue in possession; or

(ii) except as provided in subsection (3)(b), if not in possession, to take possession of the property and use and

possess the property during the pendency and until the final conclusion of the proceedings and litigation; and

(b) all actions and proceedings against the condemnor on account of the possession are stayed until the final conclusion of the proceedings and litigation.

(2) If the condemnee fails to file a statement of claim of just compensation within the time specified in 70-30-207, the condemnor may obtain an order for possession provided for in subsection (1), subject to the condition subsequent that a condemnor's payment into court of the amount assessed either by the commissioners or by the jury must be made within 10 days of receipt of the ~~condemnee's statement of claim~~ report of the condemnation commissioners under 70-30-303 or the jury verdict under 70-30-304.

(3)(a) However, when an appeal is taken by the condemnee, the court, upon request of the condemnee, may require the condemnor ~~before continuing or taking possession~~, in addition to paying into court the amount assessed, to give a bond or undertaking with sufficient sureties approved by the court and in an amount that the court may direct, conditioned to pay the condemnee any additional damages and costs above the amount assessed, which is finally determined as the amount that the condemnee is entitled to for the taking of the property, and all damages that the condemnee may sustain if for any cause the property is not finally taken for public use.

(b) The condemnor may remain in possession of the property during the proceedings to determine the bond or undertaking and may continue in possession if the condemnor posts the bond or undertaking within 10 days of the court's order determining the bond or undertaking.

(4) The amount assessed by the commissioners or by the jury on appeal is considered, for the purposes of this section and until reassessed or changed in the further proceedings, as just compensation for the property taken. However, the condemnor, by payment into court of ~~the~~ an amount ~~claimed in the answer or the amount assessed~~ under subsection (1)(a) or by giving security as provided in subsection (3), may not be prevented from appealing from the assessment but may appeal in the same manner and with the same effect as if money had not been deposited or security had not been given.

(5) (a) Subject to subsection (5)(b), in all cases in which the condemnor deposits ~~the~~ an amount ~~of the assessment~~ under subsection (1)(a) and continues in possession or takes possession of the property, as provided in this section, the condemnee, if there is no dispute as to the ownership of the property, may at any time demand and receive upon order of the court all or any part of the money deposited. The demand or receipt may not preclude the condemnee's right of appeal from the assessment. However, if the amount of the assessment is finally reduced on appeal by either party, the condemnee who has received all or any

part of the amount deposited is liable to the condemnor for any excess of the amount received over the amount finally assessed, with legal interest on the excess from the time the condemnee received the money deposited. The excess, plus interest, may be recovered by a civil action. Upon any appeal from an assessment by the commissioners to a jury, the jury may make a finding for any amount that it considers appropriate.

(b) The court may not order the delivery to any condemnee of more than 75% of the money deposited on the condemnee's account except upon posting of bond by the condemnee equal to the amount in excess of 75%, with sureties to be approved by the court, to repay to the condemnor amounts withdrawn that are in excess of the condemnee's final award in the proceedings."

{*Internal References to 70-30-311:*
60-4-104 70-30-302 }"

"NEW SECTION. **Section 6. Written offer, negotiation, and other condemnation policies mandated.** Unless the property owner and the state or its agent agree in writing otherwise, the state or its agent shall comply with the following policies for the acquisition of real property:

(1) Before the initiation of negotiations for the acquisition of real property, an amount must be established by the state or its agent that is reasonably believed to be just compensation for the property or interest taken and that amount must be offered for the property as a written statement of the initial offer. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which the property is acquired or by the likelihood that the property would be acquired for the improvement, other than an amount due to physical deterioration within the reasonable control of the owner, must be disregarded in determining the compensation for the property. The owner of the real property to be acquired must be provided with a written statement of the initial offer and a summary of the basis for the amount established as just compensation. When appropriate, the just compensation for the real property to be acquired and for damages to remaining real property must be separately stated. The written statement of the initial offer must be sent by certified mail to the owner's property tax address unless the owner has advised the state or its agent in writing of a different address for statements and notices for the purposes of the negotiations.

(2)(a) The owner of the property sought to be taken shall reply to the state or its agent in writing within 30 days of delivery of the written statement of the initial offer pursuant to subsection (1) or additional offers pursuant to subsection (3) in accordance with subsections (2)(b) and (2)(c) or the offer is considered rejected.

(b) In a reply to the written statement of the initial offer or additional written offers, the owner of the property sought to be taken shall accept, reject, or provide a counteroffer to the

state or its agent.

(c) The reply must be delivered by certified mail.

(3) After receiving a response to the written statement of the initial offer pursuant to subsection (2), the state or its agent may continue negotiations with the owner of the property sought to be taken by providing additional written offers. If the state or its agent provides additional written offers to the owner of the property sought to be taken, the property owner shall respond as provided in subsection (2).

(4) Forty-five days after the owner receives the written statement of the initial offer, the state or its agent may send written notice to the property owner to end initial negotiations. The notice must be sent by certified mail to the property owner's property tax address unless the owner has advised the state or its agent in writing of a different address for notices and statements for the purposes of the negotiations. The notice may request that the parties begin a mediation process under subsection (5).

(5) The state or its agent shall make every reasonable effort to expeditiously acquire real property by negotiation using the process in subsections (1) through (4). If:

(a) within 45 days of the written statement of the initial offer a voluntary property interest agreement has not been signed by both parties, a formal mediation process may begin if the parties mutually agree to a mediation process. The mediator must be paid for by the state or its agent acquiring the property. A reasonable effort does not require mediation.

(b) within 90 days of the delivery of the written statement of the initial offer the parties cannot agree on a mediation process, the mediation efforts do not produce a settlement agreement, or the parties do not otherwise reach agreement on a mutually signed property interest agreement, the state or its agent acquiring the property shall make the final written offer provided for in 70-30-111(1)(d) based upon an appraisal. The property owner has 30 days from delivery of the final written offer to either accept or reject the final written offer, and a lack of acceptance or rejection on the part of the property owner within that time means that the property owner has rejected the final written offer.

(c) the final written offer is rejected as provided in subsection (5)(b), a civil action may be filed pursuant to 70-30-202.

(6) A property owner's claim for appropriate measures under 70-30-110(2) may not be considered a rejection of the final written offer by the state or its agent referred to in 70-30-111(1)(d).

(7)(a) Real property must be appraised before the final written offer, and the owner or the owner's designated representative must be given an opportunity to accompany the appraiser during the appraiser's inspection of the property. The

appraiser has the right to enter upon property for the purposes of appraising the property, and the entry does not constitute a cause of action in favor of the owner except from injuries resulting from negligence or intentional acts.

(b) For appraisals done by appraisers licensed by another state, the licensure qualifications for that state must be as stringent as those provided for in Title 37, chapter 54, part 2.

(8) An owner may not be required to surrender possession of real property before the agreed purchase price and relocation costs are paid or before there is deposited with the court, in accordance with 70-30-311(1)(a) and subsection (11) of this section, for the benefit of the owner, an amount not less than 125% of the amount of the final written offer by the state or its agent, the amount of the award of compensation in the condemnation proceeding of the property, or the amount of compensation claimed by the condemnee in the condemnee's statement of claim of just compensation under 70-30-207.

(9) The construction or development of a program or project must be scheduled so that, to the greatest extent practicable, a person lawfully occupying real property is not required to move from a dwelling or to materially move the person's business or farm operation without at least 90 days' written notice of the date by which a move is required.

(10) If an owner or tenant is permitted to occupy the real property acquired on a rental basis, on a short-term basis, or for a period subject to termination by the condemnor on short notice, the amount of rent required may not exceed the fair rental value of the property to a short-term occupier.

(11) The timeframe for condemnation and negotiations must be in accordance with this chapter, and the deposit of funds in court for the use of the owner may not be deferred. Any other action coercive in nature may not be taken to compel an agreement on the price to be paid for the property.

(12) If an interest in real property is to be condemned for a public use as defined in 70-30-102, formal condemnation proceedings must be instituted as provided in this chapter. The state or its agent may not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of the owner's real property.

(13) If the fee acquisition of only part of the property would leave its owner with an uneconomic remnant, an offer to acquire the uneconomic remnant must be made.

(14) A person whose real property is being acquired may, after being fully informed of the person's right to receive just compensation, donate to the state or its agent the property, any interest in the property, or any compensation received for the property.

Insert: "NEW SECTION. **Section 7. {standard} Codification instruction.** [Section 6] is intended to be codified as an integral part of Title 70, chapter 30, part 1, and the provisions

of Title 70, chapter 30, part 1, apply to [section 6]."
Insert: "NEW SECTION. **Section 8. {standard} Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act]."
Insert: "NEW SECTION. **Section 9. {standard} Effective date.** [This act] is effective on passage and approval."

- END -