

1 HOUSE BILL NO. 240

2 INTRODUCED BY K. FLYNN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING EMINENT DOMAIN LAWS; CLARIFYING THE
5 REJECTION PROCESS OF A CONDEMNOR'S FINAL WRITTEN OFFER; CLARIFYING THE FACTS
6 NECESSARY FOR CONDEMNATION; CLARIFYING THE PROCESS FOR AN AWARD OF LITIGATION
7 EXPENSES; ESTABLISHING MANDATORY APPRAISAL, NEGOTIATION, AND OTHER CONDEMNATION
8 POLICIES; AMENDING SECTIONS 70-30-110, 70-30-111, AND 70-30-305, MCA; AND PROVIDING AN
9 IMMEDIATE EFFECTIVE DATE."

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

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13 **Section 1.** Section 70-30-110, MCA, is amended to read:

14 **"70-30-110. Survey and location of property to be taken -- greatest public good -- least private**
15 **injury.** (1) In all cases in which land is required for public use, the state or its agents in charge of the public use
16 may survey and locate the land to be used. The use must be located in the manner that will be most compatible
17 with the greatest public good and the least private injury, and the location is subject to the provisions of
18 70-30-206. The state or its agents in charge of the public use may, after giving 30 days' written notice to the
19 owners and persons in possession of the land, enter upon the land and make examination, surveys, and maps
20 of the land. The entry does not constitute a cause of action in favor of the owners of the land except from injuries
21 resulting from negligence or intentional acts. Upon written request of the state or its agents, the owner shall
22 provide the names and addresses of all persons who are in possession of the owner's land within 14 days from
23 receipt of the written notice. The state or its agents shall within 14 days from receipt of that information furnish
24 written notice to the listed persons.

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

29 (b) A condemnee's claim for appropriate measures pursuant to subsection (2)(a) may not be considered
30 a rejection of the condemnor's final written offer referred to in 70-30-111(4)."

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

"70-30-111. Facts necessary to be found before condemnation. 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) the use to which the property is to be applied is a public use pursuant to 70-30-102;

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

(3) 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) an effort to obtain the property interest sought to be taken was made by submission of a written offer and the offer was rejected.~~

(4) after every reasonable effort was made through negotiation to acquire the property interest sought to be taken, a final written offer of just compensation was made and that offer was rejected in writing; and

(5) the appraisal, negotiation, and other condemnation policies required pursuant to [section 4] have been satisfied."

Section 3. 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 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(4), the court shall award necessary expenses of litigation to the condemnee."

1 **NEW SECTION. Section 4. Appraisal, negotiation, and other condemnation policies mandated.**

2 Unless the condemnee and condemnor agree in writing otherwise, a condemnor shall comply with the following
3 policies for the acquisition of real property for which federal financial assistance is not available to pay all or any
4 part of the cost of a project or program pursuant to 70-31-301:

5 (1) The condemnor shall make every reasonable effort to expeditiously acquire real property by
6 negotiation.

7 (2) Real property must be appraised before the initiation of negotiations, and the owner or the owner's
8 designated representative must be given an opportunity to accompany the appraiser during the appraiser's
9 inspection of the property.

10 (3) Before the initiation of negotiations for real property, an amount must be established that is
11 reasonably believed to be just compensation for the property or interest taken, and that amount must be offered
12 for the property. The amount may not be less than the approved appraisal of the fair market value of the property.
13 Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the
14 public improvement for which the property is acquired or by the likelihood that the property would be acquired
15 for the improvement, other than an amount due to physical deterioration within the reasonable control of the
16 owner, must be disregarded in determining the compensation for the property. The owner of the real property to
17 be acquired must be provided with a written statement of and summary of the basis for the amount established
18 as just compensation. When appropriate, the just compensation for the real property acquired and for damages
19 to remaining real property must be separately stated.

20 (4) An owner may not be required to surrender possession of real property before the agreed purchase
21 price is paid or before there is deposited with the court, in accordance with applicable law, for the benefit of the
22 owner, an amount not less than the approved appraisal of the fair market value of the property or the amount of
23 the award of compensation in the condemnation proceeding of the property.

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

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

