

1 HOUSE BILL NO. 240

2 INTRODUCED BY K. FLYNN, R. ARTHUN, D. SKEES, A. WITTICH

3
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; PROVIDING CERTAIN TAX RATES FOR TRANSMISSION LINES FOR WHICH EMINENT DOMAIN
9 MAY BE USED; AMENDING SECTIONS 70-30-101, 70-30-110, 70-30-111, AND 70-30-305, MCA; AND
10 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

- 13
14 **SECTION 1. SECTION 70-30-101, MCA, IS AMENDED TO READ:**
- 15 **"70-30-101. Eminent domain defined -- definitions.** (1) Eminent domain is the right of the state to take
16 private property for public use. This right may be exercised in the manner provided in this chapter.
- 17 (2) As used in this chapter, unless the context indicates otherwise, the following definitions apply:
- 18 (a) "Appraisal" means a written statement, independently and impartially prepared by a certified real
19 estate appraiser, as defined in 37-54-102, setting forth an opinion of defined value of an adequately described
20 property as of a specific date and supported by the presentation and analysis of relevant market information.
- 21 (b) "Coercive in nature" means a type of action that uses duress in an attempt to induce a person to sign
22 an instrument or to agree to the terms of a document against that person's will.
- 23 (c) "Condemnor" means a department, agency, or instrumentality of the state or a political subdivision
24 of the state, a department, agency, or instrumentality of two or more states, or a person who has the authority
25 to acquire property by eminent domain as provided in this chapter.
- 26 (d) "Every reasonable effort" means the effort that a reasonable person acting as a motivated buyer
27 would use to accomplish the purchase of a property interest of a reluctant seller.
- 28 (e) "Final written offer" means the last written offer presented to the condemnee at least 30 days before
29 service of process in a civil action pursuant to 70-30-202.
- 30 (f) "Negotiation" means a communication process of give-and-take discussions between parties that is

1 intended to produce a settlement or an agreement.

2 (g) "Person" means an individual, partnership, corporation, or association."

3

4 **Section 2.** Section 70-30-110, MCA, is amended to read:

5 **"70-30-110. Survey and location of property to be taken -- greatest public good -- least private**

6 **injury.** (1) In all cases in which land is required for public use, the state or its agents in charge of the public use

7 may survey and locate the land to be used. The use must be located in the manner that will be most compatible

8 with the greatest public good and the least private injury, and the location is subject to the provisions of

9 70-30-206. The state or its agents in charge of the public use may, after giving 30 days' written notice to the

10 owners and persons in possession of the land, enter upon the land and make examination, surveys, and maps

11 of the land. The entry does not constitute a cause of action in favor of the owners of the land except from injuries

12 resulting from negligence or intentional acts. Upon written request of the state or its agents, the owner shall

13 provide the names and addresses of all persons who are in possession of the owner's land within 14 days from

14 receipt of the written notice. The state or its agents shall within 14 days from receipt of that information furnish

15 written notice to the listed persons.

16 (2) (a) Prior to ~~or at the time of rejection~~ of the final written offer as referred to in 70-30-111(4), the

17 condemnee may provide to the condemnor the condemnee's claim of appropriate measures that the condemnee

18 considers necessary to minimize damages to the property directly affected by the project as well as to minimize

19 damages incurred to the remaining parcel of property.

20 (b) A condemnee's claim for appropriate measures pursuant to subsection (2)(a) may not be considered

21 a rejection of the condemnor's final written offer referred to in 70-30-111(4)."

22

23 **Section 3.** Section 70-30-111, MCA, is amended to read:

24 **"70-30-111. Facts necessary to be found before condemnation.** Before property can be taken, the

25 condemnor shall show by a preponderance of the evidence that the public interest requires the taking based on

26 the following findings:

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

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

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

30 used is a more necessary public use;

1 ~~_____ (4) an effort to obtain the property interest sought to be taken was made by submission of a written offer~~
 2 ~~and the offer was rejected:~~

3 ~~(4) after every reasonable effort was made through negotiation to acquire the property interest sought~~
 4 ~~to be taken, a final written offer of just compensation was made and that offer was rejected in writing; and THE~~
 5 ~~PROPERTY OWNER WAS GIVEN 30 DAYS TO PROVIDE A WRITTEN ACCEPTANCE OR REJECTION OF THE OFFER. A WRITTEN~~
 6 ~~OFFER IS CONSIDERED REJECTED IF NO RESPONSE IS MADE WITHIN 30 DAYS AFTER ITS DELIVERY.~~

7 ~~(5) the appraisal, negotiation, and other condemnation policies required pursuant to [section 4] [SECTION~~
 8 ~~5] AND 70-31-301 have been satisfied; AND~~

9 ~~(6) THAT THERE HAVE BEEN NO ACTIONS COERCIVE IN NATURE TO COMPEL AN AGREEMENT ON THE PRICE TO BE~~
 10 ~~PAID FOR THE PROPERTY."~~

11
 12 **Section 4.** Section 70-30-305, MCA, is amended to read:

13 **"70-30-305. Condemnor to make offer upon appeal -- award of expenses of litigation.** (1) The
 14 condemnor shall, within 30 days after an appeal is perfected from the condemnation commissioner's award or
 15 report or not more than 60 days after the waiver of appointment of commissioners, submit to the condemnee a
 16 written ~~final~~ offer of judgment for the property sought to be taken, together with the accrued necessary expenses
 17 of the condemnee. If at any time prior to 10 days before trial the condemnee serves written notice that the offer
 18 is accepted, either party may then file the offer and notice of acceptance, together with proof of service of the
 19 acceptance, and judgment must be entered. An offer not accepted is considered withdrawn and evidence of the
 20 offer is not admissible at the trial ~~except in a proceeding to determine costs~~. The fact that an offer is made but
 21 not accepted does not preclude a subsequent offer.

22 (2) In the event of litigation and when the condemnee prevails by receiving an award in excess of the
 23 ~~final offer of the condemnor~~ written offer as provided in 70-30-111(4), the court shall award necessary expenses
 24 of litigation to the condemnee."
 25

26 **NEW SECTION. Section 5. Appraisal, negotiation, and other condemnation policies mandated.**
 27 Unless the condemnee and condemnor agree in writing otherwise, a condemnor shall comply with the following
 28 policies for the acquisition of real property ~~for which federal financial assistance is not available to pay all or any~~
 29 ~~part of the cost of a project or program pursuant to 70-31-301:~~

30 (1) BEFORE THE INITIATION OF NEGOTIATIONS FOR THE ACQUISITION OF REAL PROPERTY, AN AMOUNT MUST BE

1 ESTABLISHED THAT IS REASONABLY BELIEVED TO BE JUST COMPENSATION FOR THE PROPERTY OR INTEREST TAKEN AND
 2 THAT AMOUNT MUST BE OFFERED FOR THE PROPERTY. THE AMOUNT MAY NOT BE LESS THAN THE APPROVED APPRAISAL
 3 OF THE FAIR MARKET VALUE OF THE PROPERTY. ANY DECREASE OR INCREASE IN THE FAIR MARKET VALUE OF REAL
 4 PROPERTY PRIOR TO THE DATE OF VALUATION CAUSED BY THE PUBLIC IMPROVEMENT FOR WHICH THE PROPERTY IS
 5 ACQUIRED OR BY THE LIKELIHOOD THAT THE PROPERTY WOULD BE ACQUIRED FOR THE IMPROVEMENT, OTHER THAN AN
 6 AMOUNT DUE TO PHYSICAL DETERIORATION WITHIN THE REASONABLE CONTROL OF THE OWNER, MUST BE DISREGARDED
 7 IN DETERMINING THE COMPENSATION FOR THE PROPERTY. THE OWNER OF THE REAL PROPERTY TO BE ACQUIRED MUST
 8 BE PROVIDED WITH A WRITTEN STATEMENT OF AND SUMMARY OF THE BASIS FOR THE AMOUNT ESTABLISHED AS JUST
 9 COMPENSATION. WHEN APPROPRIATE, THE JUST COMPENSATION FOR THE REAL PROPERTY ACQUIRED AND FOR DAMAGES
 10 TO REMAINING REAL PROPERTY MUST BE SEPARATELY STATED.

11 ~~(4)~~(2) The condemnor shall make every reasonable effort to expeditiously acquire real property by
 12 negotiation USING THE FOLLOWING PROCESS BEFORE A CIVIL ACTION FOR CONDEMNATION MAY BE BROUGHT PURSUANT
 13 TO 70-30-202:

14 (A) IF WITHIN 4 MONTHS OF THE INITIAL OFFER A VOLUNTARY PROPERTY INTEREST AGREEMENT HAS NOT BEEN
 15 SIGNED BY BOTH PARTIES, THEN A FORMAL MEDIATION PROCESS MAY BEGIN. THE MEDIATION PROCESS MUST BE PAID FOR
 16 BY THE PERSON ACQUIRING THE PROPERTY.

17 (B) IF MEDIATION EFFORTS DO NOT PRODUCE A SETTLEMENT AGREEMENT FOR A MUTUALLY SIGNED PROPERTY
 18 INTEREST AGREEMENT, THE PERSON ACQUIRING THE PROPERTY SHALL MAKE THE FINAL WRITTEN OFFER PROVIDED FOR
 19 IN 70-30-111.

20 (C) THE PROPERTY OWNER OR THE PROPERTY OWNER'S AGENT HAS 30 DAYS TO EITHER ACCEPT OR REJECT THE
 21 FINAL WRITTEN OFFER, AND A LACK OF RESPONSE ON THE PART OF THE PROPERTY OWNER WITHIN THAT TIME MEANS THAT
 22 THE PROPERTY OWNER HAS REJECTED THE FINAL WRITTEN OFFER.

23 (D) IF THE PERSON ACQUIRING THE PROPERTY HAS COMPLIED WITH 70-30-111, A CIVIL ACTION MAY BE FILED
 24 PURSUANT TO 70-30-202.

25 ~~(2)~~(3) Real property must be appraised before the initiation of negotiations, and the owner or the owner's
 26 designated representative must be given an opportunity to accompany the appraiser during the appraiser's
 27 inspection of the property.

28 ~~(3) Before the initiation of negotiations for real property, an amount must be established that is~~
 29 ~~reasonably believed to be just compensation for the property or interest taken, and that amount must be offered~~
 30 ~~for the property. The amount may not be less than the approved appraisal of the fair market value of the property.~~

1 ~~Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the~~
 2 ~~public improvement for which the property is acquired or by the likelihood that the property would be acquired~~
 3 ~~for the improvement, other than an amount due to physical deterioration within the reasonable control of the~~
 4 ~~owner, must be disregarded in determining the compensation for the property. The owner of the real property to~~
 5 ~~be acquired must be provided with a written statement of and summary of the basis for the amount established~~
 6 ~~as just compensation. When appropriate, the just compensation for the real property acquired and for damages~~
 7 ~~to remaining real property must be separately stated.~~

8 (4) An owner may not be required to surrender possession of real property before the agreed purchase
 9 price is AND RELOCATION COSTS ARE paid or before there is deposited with the court, in accordance with applicable
 10 law, for the benefit of the owner, an amount not less than the ~~approved appraisal of the fair market value of the~~
 11 ~~property~~ AMOUNT OF THE CONDEMNOR'S FINAL WRITTEN OFFER or the amount of the award of compensation in the
 12 condemnation proceeding of the property.

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

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

20 (7) The time of condemnation may not be advanced, negotiations or condemnation and the deposit of
 21 funds in court for the use of the owner may not be deferred, and any other action coercive in nature may not be
 22 taken to compel an agreement on the price to be paid for the property. IF CONDEMNATION IS INITIATED PURSUANT
 23 TO 70-30-202, THE AMOUNT OF THE CONDEMNOR'S FINAL WRITTEN OFFER MUST BE DEPOSITED WITH THE COURT FOR THE
 24 USE OF THE CONDEMNEE.

25 (8) If an interest in real property is to be acquired by exercise of the power of eminent domain, formal
 26 condemnation proceedings must be instituted as provided in this chapter. The condemnor may not intentionally
 27 make it necessary for an owner to institute legal proceedings to prove the fact of the taking of the owner's real
 28 property.

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

1 (10) A person whose real property is being acquired may, after being fully informed of the person's right
 2 to receive just compensation, donate to the condemnor the property, any interest in the property, or any
 3 compensation received for the property.

4
 5 **NEW SECTION. SECTION 6. TAXATION OF PROPERTY ACQUIRED FOR ELECTRIC TRANSMISSION LINES.** (1) IF
 6 AN ELECTRIC TRANSMISSION LINE THAT REQUIRES A CERTIFICATE OF COMPLIANCE UNDER THE MONTANA MAJOR FACILITY
 7 SITING ACT, TITLE 75, CHAPTER 20, IS SITED ON PRIVATELY HELD DEEDED REAL PROPERTY THAT IS ACQUIRED THROUGH
 8 A VOLUNTARY AGREEMENT WITH THE PROPERTY OWNER, THE CENTRALLY ASSESSED VALUE FOR THAT PORTION OF THE
 9 PRIVATELY HELD DEEDED REAL PROPERTY IS SUBJECT TO THE TAX RATE OF EITHER 1 PERCENTAGE POINT LESS THAN THE
 10 RATE FOR CLASS FOURTEEN PROPERTY, AS PROVIDED IN 15-6-157, FOR RENEWABLE ENERGY PROJECTS, OR 1
 11 PERCENTAGE POINT LESS THAN THE TAX RATE FOR CLASS NINE PROPERTY, AS PROVIDED IN 15-6-141, FOR OTHER
 12 TRANSMISSION PROJECTS, AS DETERMINED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY PURSUANT TO
 13 15-6-157(2)(A).

14 (2) IF AN ELECTRIC TRANSMISSION LINE THAT REQUIRES A CERTIFICATE OF COMPLIANCE UNDER THE MONTANA
 15 MAJOR FACILITY SITING ACT IS SITED ON PRIVATELY HELD DEEDED REAL PROPERTY THAT IS ACQUIRED BY A CIVIL ACTION
 16 PURSUANT TO 70-30-202, THAT PROPERTY IS SUBJECT TO A TAX RATE THAT IS 3 PERCENTAGE POINTS HIGHER THAN THE
 17 TAX RATE FOR CLASS NINE PROPERTY, AS PROVIDED IN 15-6-141.

18 (3) IF AN ENTITY REACHES VOLUNTARY PROPERTY AGREEMENTS WITH 97% OF THE LANDOWNERS OWNING
 19 PROPERTY ACQUIRED FOR THE TRANSMISSION LINE, THE ENTITY IS ENTITLED TO THE LOWEST PROPERTY TAX RATE FOR
 20 TRANSMISSION PROJECTS PROVIDED BY LAW.

21
 22 **NEW SECTION. SECTION 7. Codification instruction.** (1) [Section 4 5] is intended to be codified as
 23 an integral part of Title 70, chapter 30, part 1, and the provisions of Title 70, chapter 30, part 1, apply to [section
 24 4 5].

25 (2) [SECTION 6] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 15, CHAPTER 24, AND THE
 26 PROVISIONS OF TITLE 15, CHAPTER 24, APPLY TO [SECTION 6].

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 28 **NEW SECTION. SECTION 8. Saving clause.** [This act] does not affect rights and duties that matured,
 29 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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