

HOUSE BILL NO. 583

INTRODUCED BY K. REGIER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

A BILL FOR AN ACT ENTITLED: "AN ACT DETERMINING PROCEDURES TO BE UNDERTAKEN PRIOR TO CONDEMNATION IN ACCORDANCE WITH EMINENT DOMAIN LAWS; ESTABLISHING CRITERIA FOR AN APPRAISAL CONDUCTED PURSUANT TO EMINENT DOMAIN LAWS; REQUIRING A CONDEMNOR TO MAKE A DEPOSIT WITH THE COURT BEFORE PROCEEDINGS CONTINUE; ALLOWING CONDEMNNEES TO ACCESS THE DEPOSIT; AND AMENDING SECTIONS 70-30-101, 70-30-111, 70-30-207, AND 70-30-311, MCA."

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

NEW SECTION. Section 1. Appraisal requirements. (1) Appraisals used by a condemnor or the

owner of the property sought to be taken in an eminent domain proceeding under this chapter must be:

(a) prepared by a certified general real estate appraiser with a minimum of 5 years experience who is:

(i) licensed by the state of Montana in accordance with Title 37, chapter 54, part 2; or

(ii) licensed by another state with qualifications for licensure as stringent as those provided in Title 37, chapter 54, part 2; and

(b) conducted for the existing land use of the subject property at the time of the appraisal.

(2) All comparable sales used in an appraisal must be from properties with the same land use as the subject property in comparable geographic settings.

(3) The appraisal must be conducted in accordance with current:

(a) uniform standards of professional appraisal practice established for certified real estate appraisers under 37-54-403; and

(b) uniform standards for federal land acquisition.

NEW SECTION. Section 2. Precondemnation procedures. (1) Prior to undertaking a condemnation

action, the condemnor shall send the owner of the property sought to be taken a written notice. The notice must be sent to the property owner's property tax address and delivered by certified mail. The notice must contain information describing:



- 1 (a) the public use as described in 70-30-102;
- 2 (b) an offer, which may serve as the condemnor's final offer in accordance with subsection (6), describing
3 the condemnor's assessment of the fair market value of the property interest needed for the proposal; and
- 4 (c) the basis for the offer provided pursuant to subsection (1)(b).
- 5 (2) (a) The owner of the property sought to be taken shall reply to the condemnor in writing within 15
6 days of delivery of the notice pursuant to subsection (1) in accordance with subsections (2)(b) through (2)(d).
- 7 (b) In a reply to the written notice, the owner of the property sought to be taken shall accept, reject, or
8 provide a counteroffer to the state or its agent.
- 9 (c) If the owner of the property sought to be taken fails to reply within 15 days, it will be considered a
10 rejection of the condemnor's offer.
- 11 (d) The reply must be delivered by certified mail.
- 12 (3) After receiving a response to the condemnor's offer pursuant to subsection (2), the condemnor may
13 continue negotiations with the owner of the property sought to be taken by providing additional written offers. If
14 the condemnor provides additional written offers to the owner of the property sought to be taken, the property
15 owner shall respond as provided in subsection (2).
- 16 (4) If the property owner fails to respond, the offer is rejected, or if, despite receiving a counteroffer, the
17 condemnor believes an impasse exists between the parties after acting pursuant to subsections (1) through (3),
18 the condemnor may declare an impasse by sending written notice to the owner of the property sought to be taken.
19 The notice must be sent to the property owner's property tax address and delivered by certified mail. The notice
20 may refer to a condemnor's written offer, as provided in subsection (1), and may serve as the condemnor's final
21 offer pursuant to subsection (6).
- 22 (5) (a) Prior to filing a condemnation action in accordance with this chapter, the condemnor shall conduct
23 an appraisal of the subject property in accordance with subsections (5)(b) through (5)(d). The appraisal may
24 include an onsite review of the property if required pursuant to [section 1].
- 25 (b) (i) If an onsite review is required, the condemnor shall request permission from the owner of the
26 property sought to be taken to enter the property to conduct an appraisal.
- 27 (ii) If the owner of the property sought to be taken does not grant the condemnor permission to enter the
28 property, the condemnor shall make a written request for entry. The written request must be delivered by certified
29 mail to the property owner's property tax address.
- 30 (iii) If the owner does not respond to the written request within 5 days or if the owner indicates that entry

1 to the property is denied, the condemnor shall provide the owner of the property sought to be taken 15 days'
2 written notice prior to entering upon the property.

3 (c) The right of entry to conduct an appraisal in accordance with this subsection (5) may be enforced by
4 injunction.

5 (d) The owner of the property sought to be taken or the owner's representative and the condemnor or
6 its representative may accompany the appraiser during the appraiser's inspection of the property.

7 (6) The condemnor shall provide the property owner with a copy of an appraisal in accordance with
8 subsection (5) and a final written offer for the property pursuant to 70-30-111(4). The final offer must be sent to
9 the property owner's property tax address and be delivered by certified mail. The condemnor shall note that it is
10 the final offer in the written offer.

11 (7) If the property owner rejects or fails to respond to the final offer provided for in subsection (6) in
12 writing within 15 days, the condemnor may initiate condemnation proceedings as provided in this chapter. The
13 response must be delivered by certified mail.

14

15 **Section 3.** Section 70-30-101, MCA, is amended to read:

16 **"70-30-101. Eminent domain defined Definitions.** As used in this chapter, the following definitions
17 apply:

18 (1) "Appraisal" means the written estimate of the fair market value of a property by a certified general
19 appraiser in accordance with [section 1].

20 (2) "Comparable sales" means the value of a property interest sold by one party to another in an
21 arm's-length transaction that is similar to a property being appraised.

22 (3) ~~Eminent domain is~~ "Eminent domain" means the right of the state to take private property for public
23 use. This right may be exercised in the manner provided in this chapter.

24 (4) "Subject property" means the property interest being appraised."

25

26 **Section 4.** Section 70-30-111, MCA, is amended to read:

27 **"70-30-111. Facts necessary to be found before condemnation.** Before property can ~~can~~ may be taken,
28 the condemnor shall show by a preponderance of the evidence that the public interest requires the taking based
29 on the following findings:

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

- 1 (2) the taking is necessary to the public use;
- 2 (3) if already being used for a public use, that the public use for which the property is proposed to be
3 used is a more necessary public use;
- 4 (4) an effort to obtain the property interest sought to be taken was made by submission of a written offer
5 in accordance with [section 2] and the offer was rejected or the offer was rejected in accordance with [section 2]
6 because a property owner did not respond or the condemnor believed an impasse existed."

7

8 **Section 5.** Section 70-30-207, MCA, is amended to read:

9 **"70-30-207. Appointment of condemnation commissioners -- affidavit -- compensation.** (1) (a)
10 Within 30 days of entry of a preliminary condemnation order, the condemnee shall file a statement of the
11 condemnee's claim of just compensation.

12 (b) If within 20 days of service of the condemnee's claim the condemnor fails to accept the claim; or if
13 the condemnee fails to file a claim, then before proceedings begin, the condemnor shall deposit with the court
14 an amount equal to the condemnor's appraised fair market value determined by an appraisal conducted pursuant
15 [section 2(5)] of the property sought to be taken. A condemnee may access up to 75% of the amount deposited
16 in the same manner as provided in 70-30-311(5).

17 (2) After the condemnor's deposit is made in accordance with subsection (1), upon the request of the
18 condemnor or the condemnee, the court shall appoint condemnation commissioners. The commission hearing
19 may be waived by written consent of both parties, in which case the proceeding must be conducted in the district
20 court as if the case had been appealed from an award by the commissioners.

21 ~~(2)~~(3) The court shall appoint three qualified, disinterested condemnation commissioners; unless
22 appointment has been waived. One of the commissioners must be nominated by the condemnor. One of the
23 commissioners must be nominated by the condemnee. The third commissioner is the presiding officer and must
24 be nominated by the two commissioners previously nominated. However, if the two commissioners fail to make
25 the choice at the time of their appointment, then the nomination must be made by the presiding judge.

26 ~~(3)~~(4) Each commissioner:

27 (a) must have sufficient knowledge of the English language;

28 (b) must be a resident of a county within the judicial district in which the action is pending;

29 (c) may not be related within the sixth degree of consanguinity to any party; and

30 (d) may not stand in the relation of guardian and ward, master and servant, debtor and creditor, principal

1 and agent, or partner or surety to any party.

2 ~~(4)~~(5) At the time of the meeting and nominations, there must be filed with the court by each nominating
3 party or judge an affidavit of the person nominated stating substantially the following:

4 (a) that the person has not formed an unqualified opinion or belief as to the compensation to be awarded
5 in the proceeding or as to the fairness or unfairness of the condemnor's offer for the lands and improvements of
6 the condemnee;

7 (b) that the person has no enmity against or bias in favor of any party and has not discussed,
8 communicated, overheard, or read any discussion or communication from any party relating to values of the lands
9 in question or the compensation offered, demanded, or to be awarded;

10 (c) that if selected as a condemnation commissioner, the person is willing to serve and will try the issues
11 of compensation and render a decision according to the evidence and in compliance with the instructions of the
12 court; and

13 (d) that the person will not discuss the case with anyone except the other commissioners until a decision
14 has been filed with the court.

15 ~~(5)~~(6) The court shall specify the compensation of the condemnation commissioners, which may not
16 exceed \$250 for each hearing day, including expenses. The condemnor shall pay the compensation of the
17 commissioners."
18

19 **Section 6.** Section 70-30-311, MCA, is amended to read:

20 **"70-30-311. Putting condemnor in possession.** (1) At any time after the filing of the preliminary
21 condemnation order pursuant to 70-30-206 or an order as provided in 60-4-104(4) and (5) and while it retains
22 jurisdiction, the court upon application of the condemnor may make an order that:

23 (a) upon payment into court of the amount of compensation claimed by the condemnee in the
24 condemnee's statement of claim of just compensation under ~~70-30-207~~ or 70-30-207(1)(a), the amount assessed
25 either by the commissioners or by the jury, or the amount deposited pursuant to 70-30-207(1)(b), the condemnor
26 is authorized:

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

29 (ii) if not in possession, to take possession of the property and use and possess the property during the
30 pendency and until the final conclusion of the proceedings and litigation; and

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

3 (2) (a) If the condemnee fails to file a statement of claim of just compensation within the time specified
4 in 70-30-207, the condemnor may obtain an order for possession provided for in subsection (1); if the condemnor
5 has made a deposit in accordance with 70-30-207(1)(b).

6 (b) An order under subsection (2)(a) is subject to the condition subsequent that, a upon determination
7 of the amount assessed by the commissioners or the jury, if the amount assessed is greater than the amount
8 deposited pursuant to 70-30-207(1)(b), the amount of the deposit is increased to account for the difference.

9 (c) The condemnor's payment into court of the difference must be made within 10 days of receipt of the
10 condemnee's statement of claim report of the condemnation commissioners in accordance with 70-30-303 or the
11 jury verdict pursuant to 70-30-304.

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

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

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

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

5 (b) The court may not order the delivery to any condemnee of more than 75% of the money deposited
6 on the condemnee's account except upon posting of bond by the condemnee equal to the amount in excess of
7 75%, with sureties to be approved by the court, to repay to the condemnor amounts withdrawn that are in excess
8 of the condemnee's final award in the proceedings."

9
10 **NEW SECTION. Section 7. Codification instruction.** [Sections 1 and 2] are intended to be codified
11 as an integral part of Title 70, chapter 30, part 1, and the provisions of Title 70, chapter 30, part 1, apply to
12 [sections 1 and 2].

13
14 **NEW SECTION. Section 8. Saving clause.** [This act] does not affect rights and duties that matured,
15 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

16
17 **NEW SECTION. Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable
18 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
19 remains in effect in all valid applications that are severable from the invalid applications.

20 - END -