

HOUSE BILL NO. 583

INTRODUCED BY K. REGIER, A. OLSON

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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; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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~~ HIGHEST AND BEST 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



1 information describing:

2 (a) the public use as described in 70-30-102;

3 (b) an offer, which may serve as the condemnor's final offer in accordance with subsection (6), describing
4 the condemnor's assessment of the fair market value of the property interest needed for the proposal; and

5 (c) the basis for the offer provided pursuant to subsection (1)(b).

6 (2) (a) The owner of the property sought to be taken shall reply to the condemnor in writing within 15
7 days of delivery of the notice pursuant to subsection (1) in accordance with subsections (2)(b) through (2)(d).

8 (b) In a reply to the written notice, the owner of the property sought to be taken shall accept, reject, or
9 provide a counteroffer to the state or its agent.

10 (c) If the owner of the property sought to be taken fails to reply within 15 days, it will be considered a
11 rejection of the condemnor's offer.

12 (d) The reply must be delivered by certified mail.

13 (3) After receiving a response to the condemnor's offer pursuant to subsection (2), the condemnor may
14 continue negotiations with the owner of the property sought to be taken by providing additional written offers. If
15 the condemnor provides additional written offers to the owner of the property sought to be taken, the property
16 owner shall respond as provided in subsection (2).

17 (4) If the property owner fails to respond, the offer is rejected, or if, despite receiving a counteroffer, the
18 condemnor believes an impasse exists between the parties after acting pursuant to subsections (1) through (3),
19 the condemnor may declare an impasse by sending written notice to the owner of the property sought to be taken.
20 The notice must be sent to the property owner's property tax address and delivered by certified mail. The notice
21 may refer to a condemnor's written offer, as provided in subsection (1), and may serve as the condemnor's final
22 offer pursuant to subsection (6).

23 (5) (a) Prior to filing a condemnation action in accordance with this chapter, the condemnor shall conduct
24 an appraisal of the subject property in accordance with subsections (5)(b) through (5)(d). The appraisal may
25 include an onsite review of the property if required pursuant to [section 1].

26 (b) (i) If an onsite review is required, the condemnor shall request permission from the owner of the
27 property sought to be taken to enter the property to conduct an appraisal.

28 (ii) If the owner of the property sought to be taken does not grant the condemnor permission to enter the
29 property, the condemnor shall make a written request for entry. The written request must be delivered by certified
30 mail to the property owner's property tax address.

1 (iii) If the owner does not respond to the written request within 5 days or if the owner indicates that entry
 2 to the property is denied, the condemnor shall provide the owner of the property sought to be taken 15 days'
 3 written notice prior to entering upon the property.

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

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

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

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

15

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

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

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

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

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

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

26

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

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

- 1 (1) the use to which the property is to be applied is a public use pursuant to 70-30-102;
- 2 (2) the taking is necessary to the public use;
- 3 (3) if already being used for a public use, that the public use for which the property is proposed to be
- 4 used is a more necessary public use;
- 5 (4) an effort to obtain the property interest sought to be taken was made by submission of a written offer
- 6 in accordance with [section 2] and the offer was rejected or the offer was rejected in accordance with [section 2]
- 7 because a property owner did not respond or the condemner believed an impasse existed."

8

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

10 **"70-30-207. Appointment of condemnation commissioners -- affidavit -- compensation.** (1) (a)

11 Within 30 days of entry of a preliminary condemnation order, the condemnee shall file a statement of the

12 condemnee's claim of just compensation.

13 (b) If within 20 days of service of the condemnee's claim the condemner fails to accept the claim; or if

14 the condemnee fails to file a claim, then before proceedings begin, the condemner shall deposit with the court

15 an amount equal to the condemner's appraised fair market value determined by an appraisal conducted pursuant

16 TO [section 2(5)] of the property sought to be taken. A condemnee may ~~access~~ WITHDRAW up to 75% of the

17 amount deposited in the same manner as provided in 70-30-311(5).

18 (2) After the condemner's deposit is made in accordance with subsection (1), upon the request of the

19 condemner or the condemnee, the court shall appoint condemnation commissioners. The commission hearing

20 may be waived by written consent of both parties, in which case the proceeding must be conducted in the district

21 court as if the case had been appealed from an award by the commissioners.

22 (2)(3) The court shall appoint three qualified, disinterested condemnation commissioners; unless

23 appointment has been waived. One of the commissioners must be nominated by the condemner. One of the

24 commissioners must be nominated by the condemnee. The third commissioner is the presiding officer and must

25 be nominated by the two commissioners previously nominated. However, if the two commissioners fail to make

26 the choice at the time of their appointment, then the nomination must be made by the presiding judge.

27 (3)(4) Each commissioner:

- 28 (a) must have sufficient knowledge of the English language;
- 29 (b) must be a resident of a county within the judicial district in which the action is pending;
- 30 (c) may not be related within the sixth degree of consanguinity to any party; and

1 (d) may not stand in the relation of guardian and ward, master and servant, debtor and creditor, principal
2 and agent, or partner or surety to any party.

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

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

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

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

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

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

19

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

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

24 (a) upon payment into court of the amount of compensation ~~claimed by the condemnee in the~~
25 ~~condemnee's statement of claim of just compensation under 70-30-207 or 70-30-207(1)(a), the amount assessed~~
26 ~~either by the commissioners or by the jury; or the amount deposited pursuant to 70-30-207(1)(b)~~ AN AMOUNT
27 EQUAL TO AN ADDITIONAL 25% OF THE CONDEMNOR'S APPRAISED FAIR MARKET VALUE OF THE PROPERTY SOUGHT TO BE
28 TAKEN, the condemnor is authorized:

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

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

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

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

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

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

15 (3) However, when an appeal is taken by the condemnee and the amount deposited with the court
16 PURSUANT TO 70-30-207(1)(B) is the amount assessed by the condemnation commissioners or the jury, the court
17 may require the condemnor before continuing or taking possession, in addition to paying into court the amount
18 assessed, to give a bond or undertaking with sufficient sureties approved by the court and in an amount that the
19 court may direct, conditioned to pay the condemnee any additional damages and costs above the amount
20 assessed, which is finally determined as the amount that the condemnee is entitled to for the taking of the
21 property, and all damages that the condemnee may sustain if for any cause the property is not finally taken for
22 public use.

23 (4) The amount assessed by the commissioners or by the jury on appeal is considered, for the purposes
24 of this section and until reassessed or changed in the further proceedings, as just compensation for the property
25 taken. However, the condemnor, by payment into court of ~~the amount~~ A DEPOSIT claimed in the answer or the
26 ~~amount assessed deposited with the court in accordance with subsection (1)(a)~~ 70-30-207(1)(B) AND SUBSECTIONS
27 (1)(A) AND (2)(B) OF THIS SECTION or by giving security as provided in subsection (3), may not be prevented from
28 appealing from the assessment but may appeal in the same manner and with the same effect as if money had
29 not been deposited or security had not been given.

30 (5) (a) Subject to subsection (5)(b), in all cases in which the condemnor deposits the amount ~~of the~~

1 ~~assessment in accordance with subsection (1)(a)~~ SUBSECTIONS (1)(A) AND (2)(B), IF APPLICABLE, and continues in
2 possession or takes possession of the property, as provided in this section, the condemnee, if there is no dispute
3 as to the ownership of the property, may at any time demand and receive upon order of the court all or any part
4 of the money deposited. The demand or receipt may not preclude the condemnee's right of appeal from the
5 assessment. However, if the amount of the assessment is finally reduced on appeal by either party, the
6 condemnee who has received all or any part of the amount deposited is liable to the condemnor for any excess
7 of the amount received over the amount finally assessed, with legal interest on the excess from the time the
8 condemnee received the money deposited. The excess, plus interest, may be recovered by a civil action. Upon
9 any appeal from an assessment by the commissioners to a jury, the jury may make a finding for any amount that
10 it considers appropriate.

11 (b) The court may not order the delivery to any condemnee of more than 75% of the money deposited
12 on the condemnee's account except upon posting of bond by the condemnee equal to the amount in excess of
13 75%, with sureties to be approved by the court, to repay to the condemnor amounts withdrawn that are in excess
14 of the condemnee's final award in the proceedings."

15
16 NEW SECTION. Section 7. Codification instruction. [Sections 1 and 2] are intended to be codified
17 as an integral part of Title 70, chapter 30, part 1, and the provisions of Title 70, chapter 30, part 1, apply to
18 [sections 1 and 2].

19
20 NEW SECTION. Section 8. Saving clause. [This act] does not affect rights and duties that matured,
21 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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

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27 NEW SECTION. SECTION 10. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

28 - END -