

## 1 SENATE BILL NO. 391

2 INTRODUCED BY A. WITTICH

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO ENERGY  
5 TRANSMISSION; ESTABLISHING A PRIVATE PROPERTY PROTECTION BOARD; ESTABLISHING A  
6 PRIVATE PROPERTY PROTECTION SPECIAL REVENUE ACCOUNT AND PROGRAM; PROVIDING THE  
7 BOARD WITH RULEMAKING AUTHORITY; PROVIDING FOR A PRIVATE PROPERTY PROTECTION  
8 LICENSE FEE; AND PROVIDING AN EFFECTIVE DATE."

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

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12 NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 5], unless the context requires  
13 otherwise, the following definitions apply:

14 (1) "Board" means the private property protection board provided for in [section 2].

15 (2) "Industrial property" means property that is centrally assessed or is revalued annually by the  
16 department of revenue for property tax purposes.

17 (3) "Merchant transmission line" means a transmission facility that transmits electricity for which costs  
18 are not established and recovered by a Montana regulatory authority and the owner or operator of the  
19 transmission facility charges rates or assumes market risks for transmitting electricity for third parties that meets  
20 current criteria for evaluating merchant transmission projects by the federal energy regulatory commission. A  
21 merchant transmission line consists of a single transmission line with specified termination points constructed  
22 and entered into service as a single unit.

23 (4) "Private property" means all real property as defined in 70-1-106, belonging to any person.

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25 NEW SECTION. **Section 2. Private property protection board.** (1) There is a private property  
26 protection board.

27 (2) The board consists of five members appointed by the governor as follows:

28 (a) a person who is a qualified appraiser;

29 (b) a person who is an attorney licensed to practice law in this state with expertise in property law;

30 (c) a person who represents the agricultural industry; and

1 (d) two members of the public at large.

2 (3) The board is attached to the department of commerce for administrative purposes only as provided  
3 in 2-15-121.

4 (4) The board is a quasi-judicial board subject to the provisions of 2-15-124.

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6 **NEW SECTION. Section 3. Private property protection account.** (1) There is a private property  
7 protection account in the state special revenue fund.

8 (2) There must be deposited in the account:

9 (a) the proceeds from the license fee provided for in [section 5]; and

10 (b) all money appropriated by the legislature for the purposes of [sections 1 through 5].

11 (3) All money paid into the account must be invested by the board of investments. Earnings from  
12 investments must be deposited in the account.

13 (4) Subject to the conditions of subsection (5), money deposited in the account must be used to  
14 compensate private property owners for property damage attributable to merchant transmission line development  
15 as provided in [sections 1 through 5].

16 (5) (a) Money deposited in the account and earnings of the account may not be expended:

17 (i) unless there is a minimum account balance of \$25,000; and

18 (ii) until after the value of the merchant transmission line has been assessed.

19 (b) Subject to the provisions of subsection (5)(a), for fiscal years beginning after June 30, 2011, principal  
20 and earnings in the account may be expended for any purpose authorized pursuant to [sections 1 through 5].

21 (6) Money in the account must be awarded by the board to private property owners who qualify for  
22 damage compensation as provided in [section 4].

23

24 **NEW SECTION. Section 4. Private property protection program -- restrictions.** (1) There is a private  
25 property protection program administered by the board. The purpose of the private property protection program  
26 is to compensate private property owners for damage caused by the development of a merchant transmission  
27 line.

28 (2) The board shall adopt rules for evaluating claims for compensation submitted by a landowner. The  
29 rules must include:

30 (a) a method for submitting an application for compensation for damages caused by the development

1 of a merchant transmission line;

2 (b) a process for determining the amount of the damage to value of private property, if any, caused by  
3 development of a merchant transmission line;

4 (c) the development of eligibility requirements for receiving compensation that include an applicant's  
5 access to existing sources of funding, including state-mandated payments, that compensate for damages; and

6 (d) a compensation methodology based on a percentage of available funding paid in annual installments  
7 from the respective owner or operator of a merchant transmission line to eligible private property owners.

8 (3) (a) Except as provided in subsection (3)(b), an eligible recipient for compensation includes private  
9 property owners who can demonstrate that there is a loss of land production or a loss in the value of private  
10 property as the result of damage caused by merchant transmission line development.

11 (b) An eligible recipient for compensation does not include:

12 (i) an owner of industrial property; or

13 (ii) a private property owner that does not file an application pursuant to the provisions of subsection (2)  
14 within 1 year of the date that the owner or operator of a merchant transmission line commences construction.

15 (4) An eligible private property owner may be compensated for the damages incurred by the owner for  
16 loss of land production and income, lost land value, lost real property value, and lost value of improvements  
17 caused by merchant transmission line development. A payment made under this section may cover only private  
18 property directly affected by merchant transmission line development.

19 (5) If a private property owner disputes the board's compensation award, the board shall hold a  
20 contested case hearing under the provisions of the Montana Administrative Procedure Act. A decision of the  
21 board is a final agency decision subject to judicial review.

22 (6) The board's expenses for services provided under this section are eligible costs for reimbursement  
23 from the private property protection account provided for in [section 3].

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25 **NEW SECTION. Section 5. Private property protection license fee.** (1) (a) An owner or operator of  
26 a merchant transmission line shall pay a license fee as provided in this section.

27 (b) The license fee must be deposited as follows:

28 (i) 50% in the private property protection account established in [section 3]; and

29 (ii) 50% in the state general fund.

30 (2) An owner or operator of a merchant transmission line shall pay a license fee of 2% of the taxable

1 value of the merchant transmission line if:

2 (a) prior to construction, the owner or operator of the merchant transmission line:

3 (i) had not obtained voluntary right-of-way agreements or options for a right-of-way from more than 90%

4 of private property owners who collectively own more than 90% of the property along the right-of-way;

5 (ii) made all reasonable efforts to site the merchant transmission line on public land; and

6 (b) any construction of the merchant transmission line was commenced after June 30, 2011.

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8 **NEW SECTION. Section 6. Codification instruction.** [Sections 1 through 5] are intended to be codified

9 as an integral part of Title 70, chapter 30, and the provisions of Title 70, chapter 30, apply to [sections 1 through

10 5].

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12 **NEW SECTION. Section 7. Effective date.** [This act] is effective July 1, 2011.

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