

## HOUSE BILL NO. 295

INTRODUCED BY E. LIESER

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING AN INITIAL WRITTEN OFFER IN NEGOTIATIONS FOR THE ACQUISITION OF PROPERTY THAT IS A PUBLIC USE; REQUIRING THAT A CONDEMNEE BE AWARDED THE ENTIRE AMOUNT OF THE CONDEMNEE'S CONTINGENT ATTORNEY FEES IN AN EMINENT DOMAIN PROCEEDING UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 70-30-305 AND 70-30-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

**NEW SECTION. Section 1. Initial written offer.** The state or its agent in charge of a public use shall, before the initiation of negotiations for the acquisition of real property, establish an amount that is reasonably believed to be just compensation for the property or interest taken, and that amount must be offered for the property as a written statement of the initial offer.

**Section 2.** 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 An offer not accepted is considered withdrawn, and evidence of the offer is not admissible at the trial except in a proceeding to determine costs.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) (a) ~~in~~ Except as provided in subsection (2)(b), in the event of litigation and when the condemnee prevails by receiving an award in excess of the final offer of the condemnor, the court shall award necessary expenses of litigation to the condemnee.

(b) In the event of litigation and when the condemnee prevails by receiving an award that is 50% greater

1 than the written statement of the initial offer provided for in [section 1], the court shall award the condemnee the  
2 entire amount of the condemnee's contingent attorney fees, not to exceed 33% of the final award. The fees may  
3 not be computed on an hourly basis and must be based on the contingent fee contract that the condemnee enters  
4 into with an attorney."

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6 **Section 3.** Section 70-30-306, MCA, is amended to read:

7 **"70-30-306. Necessary expenses of litigation defined.** (1) Necessary expenses of litigation as  
8 authorized by ~~70-30-305~~ 70-30-305(2)(a) mean reasonable and necessary attorney fees, expert witness fees,  
9 exhibit costs, and court costs.

10 (2) Reasonable and necessary attorney fees as provided in subsection (1) are the customary hourly  
11 rates for an attorney's services in the county in which the trial is held. Reasonable and necessary attorney fees  
12 must be computed on an hourly basis and may not be computed on the basis of any contingent fee contract.

13 (3) Reasonable and necessary expert witness fees may not exceed the customary rate for the services  
14 of a witness of that expertise in the county in which the trial is held."

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16 NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as an  
17 integral part of Title 70, chapter 30, part 1, and the provisions of Title 70, chapter 30, part 1, apply to [section 1].

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19 NEW SECTION. Section 5. Saving clause. [This act] does not affect rights and duties that matured,  
20 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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22 NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.

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24 NEW SECTION. Section 7. Applicability. [This act] applies to awards made on or after [the effective  
25 date of this act].

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