

SENATE BILL NO. 288

INTRODUCED BY C. VINCENT

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING EMINENT DOMAIN LAWS; DETERMINING
5 PROCEDURES TO BE UNDERTAKEN PRIOR TO CONDEMNATION IN ACCORDANCE WITH EMINENT
6 DOMAIN LAWS; CLARIFYING THAT PROPERTY MAY BE TAKEN BY THE STATE OR ITS AGENTS IN
7 CHARGE OF THE PUBLIC USE IN ACCORDANCE WITH EMINENT DOMAIN LAWS; ESTABLISHING
8 CRITERIA FOR AN APPRAISAL CONDUCTED PURSUANT TO EMINENT DOMAIN LAWS; REQUIRING A
9 CONDEMNOR TO MAKE A DEPOSIT WITH THE COURT BEFORE PROCEEDINGS CONTINUE; ALLOWING
10 CONDEMNNEES TO ACCESS THE DEPOSIT; AMENDING SECTIONS 70-30-101, 70-30-102, 70-30-104,
11 70-30-106, 70-30-110, 70-30-111, 70-30-207, AND 70-30-311, MCA; AND PROVIDING AN IMMEDIATE
12 EFFECTIVE DATE."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15
16 NEW SECTION. **Section 1. Appraisal requirements.** (1) Except as provided in subsection (3),
17 appraisals used by the state or its agents or the owner of the property sought to be taken in an eminent domain
18 proceeding under this chapter must be:

- 19 (a) prepared by a certified general real estate appraiser with a minimum of 5 years experience who is:
 - 20 (i) licensed by the state of Montana in accordance with Title 37, chapter 54, part 2; or
 - 21 (ii) licensed by another state with qualifications for licensure as stringent as those provided in Title 37,
22 chapter 54, part 2; and

23 (b) conducted for the highest and best use of the subject property at the time of the appraisal.

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

26 (3) Appraisals by the state may be conducted by an appraiser employed by the state agency who is
27 Montana-licensed and Montana-certified.

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

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

1 (b) uniform standards for federal land acquisition.

2 (5) An appraisal may require an onsite review.

3

4 **NEW SECTION. Section 2. Precondemnation procedures.** (1) Prior to undertaking a condemnation
5 action, the state or its agents shall send the owner of the property sought to be taken a written notice. The notice
6 must be sent to the property owner's property tax address and delivered by certified mail. The notice must contain
7 information describing:

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

9 (b) an offer, which may serve as the state or its agents' final offer in accordance with subsection (6),
10 describing the state or its agents' assessment of the fair market value of the property interest needed for the
11 proposal; and

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

13 (2) (a) The owner of the property sought to be taken shall reply to the state or its agents in writing within
14 15 days of delivery of the notice pursuant to subsection (1) in accordance with subsections (2)(b) through (2)(d).

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

17 (c) If the owner of the property sought to be taken fails to reply within 15 days, the failure to reply will be
18 considered a rejection of the state or its agents' offer.

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

20 (3) After receiving a response to the state or its agents' offer pursuant to subsection (2), the state or its
21 agents may continue negotiations with the owner of the property sought to be taken by providing additional written
22 offers. If the state or its agents provide additional written offers to the owner of the property sought to be taken,
23 the property owner shall respond as provided in subsection (2).

24 (4) If the property owner fails to respond, if the offer is rejected, or if, despite receiving a counteroffer, the
25 state or its agents believe an impasse exists between the parties after acting pursuant to subsections (1) through
26 (3), the state or its agents may declare an impasse by sending written notice to the owner of the property sought
27 to be taken. The notice must be sent to the property owner's property tax address and delivered by certified mail.
28 The notice may refer to a state or its agents' written offer, as provided in subsection (1), and may serve as the
29 state or its agents' final offer pursuant to subsection (6).

30 (5) (a) Prior to filing a condemnation action in accordance with this chapter, the state or its agents shall

1 conduct an appraisal of the subject property in accordance with subsections (5)(b) through (5)(d).

2 (b) (i) If an onsite review is required as part of an appraisal pursuant to [section 1], the state or its agents
3 shall request permission from the owner of the property sought to be taken to enter the property to conduct an
4 appraisal.

5 (ii) If the owner of the property sought to be taken does not grant the state or its agents permission to
6 enter the property, the state or its agents shall make a written request for entry. The written request must be
7 delivered by certified mail to the property owner's property tax address.

8 (iii) If the owner does not respond to the written request within 5 days or if the owner indicates that entry
9 to the property is denied, the state or its agents shall provide the owner of the property sought to be taken 15
10 days' written notice prior to entering upon the property.

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

13 (d) The owner of the property sought to be taken or the owner's representative and the state or its agents
14 or its representative may accompany the appraiser during the appraiser's inspection of the property.

15 (6) The state or its agents shall provide the property owner with a copy of an appraisal in accordance with
16 subsection (5) and a final written offer for the property pursuant to 70-30-111(4). The final offer must be sent to
17 the property owner's property tax address and be delivered by certified mail. The state or its agents shall note
18 that it is the final offer in the written offer.

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

22

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

24 "**70-30-101. Eminent domain defined Definitions.** As used in this chapter, the following definitions
25 apply:

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

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

30 (3) ~~Eminent domain is~~ "Eminent domain" means the right of the state or its agents in charge of the public

1 use to take private property for public use. This right may be exercised in the manner provided in this chapter.

2 (4) "State or its agents" means an entity able to take private property in accordance with this chapter for
3 a public use enumerated in 70-30-102. An entity may otherwise be delegated the power of eminent domain in
4 statute for a public use enumerated in 70-30-102.

5 (5) "Subject property" means the property interest being appraised."

6

7 **Section 4.** Section 70-30-102, MCA, is amended to read:

8 **"70-30-102. Public uses enumerated.** Subject to the provisions of this chapter, the right of eminent
9 domain may be exercised for the following public uses:

10 (1) all public uses authorized by the government of the United States;

11 (2) public buildings and grounds for the use of the state and all other public uses authorized by the
12 legislature of the state;

13 (3) public buildings and grounds for the use of any county, city, town, or school district;

14 (4) canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the
15 inhabitants of any county, city, or town;

16 (5) projects to raise the banks of streams, remove obstructions from streambanks, and widen, deepen,
17 or straighten stream channels;

18 (6) water and water supply systems as provided in Title 7, chapter 13, part 44;

19 (7) roads, streets, alleys, controlled-access facilities, and other publicly owned buildings and facilities
20 for the benefit of a county, city, or town or the inhabitants of a county, city, or town;

21 (8) acquisition of road-building material as provided in 7-14-2123;

22 (9) stock lanes as provided in 7-14-2621;

23 (10) parking areas as provided in 7-14-4501 and 7-14-4622;

24 (11) airport purposes as provided in 7-14-4801, 67-2-301, 67-7-210, and Title 67, chapters 10 and 11;

25 (12) urban renewal projects as provided in Title 7, chapter 15, parts 42 and 43, except that private
26 property may be acquired for urban renewal through eminent domain only if the property is determined to be a
27 blighted area, as defined in 7-15-4206(2)(a), (2)(h), (2)(k), or (2)(n), and may not be acquired for urban renewal
28 through eminent domain if the purpose of the project is to increase government tax revenue;

29 (13) housing authority purposes as provided in Title 7, chapter 15, part 44;

30 (14) county recreational and cultural purposes as provided in 7-16-2105;

- 1 (15) city or town athletic fields and civic stadiums as provided in 7-16-4106;
- 2 (16) county cemetery purposes pursuant to 7-11-1021, cemetery association purposes as provided in
3 35-20-104, and state veterans' cemetery purposes as provided in 10-2-604;
- 4 (17) preservation of historical or archaeological sites as provided in 23-1-102 and 87-1-209(2);
- 5 (18) public assistance purposes as provided in 53-2-201;
- 6 (19) highway purposes as provided in 60-4-103 and 60-4-104;
- 7 (20) common carrier pipelines as provided in 69-13-104;
- 8 (21) water supply, water transportation, and water treatment systems as provided in 75-6-313;
- 9 (22) mitigation of the release or threatened release of a hazardous or deleterious substance as provided
10 in 75-10-720;
- 11 (23) the acquisition of nonconforming outdoor advertising as provided in 75-15-123;
- 12 (24) screening for or the relocation or removal of junkyards, motor vehicle graveyards, motor vehicle
13 wrecking facilities, garbage dumps, and sanitary landfills as provided in 75-15-223;
- 14 (25) water conservation and flood control projects as provided in 76-5-1108;
- 15 (26) acquisition of natural areas as provided in 76-12-108;
- 16 (27) acquisition of water rights for the natural flow of water as provided in 85-1-204;
- 17 (28) property and water rights necessary for waterworks as provided in 85-1-209 and 85-7-1904;
- 18 (29) conservancy district purposes as provided in 85-9-410;
- 19 (30) wharves, docks, piers, chutes, booms, ferries, bridges, private roads, plank and turnpike roads, and
20 railroads;
- 21 (31) canals, ditches, flumes, aqueducts, and pipes for:
- 22 (a) supplying mines, mills, and smelters for the reduction of ores;
- 23 (b) supplying farming neighborhoods with water and drainage;
- 24 (c) reclaiming lands; and
- 25 (d) floating logs and lumber on streams that are not navigable;
- 26 (32) sites for reservoirs necessary for collecting and storing water. However, reservoir sites must possess
27 a public use demonstrable to the district court as the highest and best use of the land.
- 28 (33) roads, tunnels, and dumping places for working mines, mills, or smelters for the reduction of ores;
- 29 (34) outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines,
30 mills, and smelters for the reduction of ores;

1 (35) an occupancy in common by the owners or the possessors of different mines of any place for the
2 flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of
3 ores and sites for reservoirs necessary for collecting and storing water for the mines, mills, or smelters. However,
4 the reservoir sites must possess a public use demonstrable to the district court as the highest and best use of
5 the land.

6 (36) private roads leading from highways to residences or farms;

7 (37) telephone or electrical energy lines, except that local government entities as defined in 2-7-501,
8 municipal utilities, or competitive electricity suppliers may not use this chapter to acquire existing telephone or
9 electrical energy lines and appurtenant facilities owned by a public utility or cooperative for the purpose of
10 transmitting or distributing electricity or providing telecommunications services;

11 (38) telegraph lines;

12 (39) sewerage of any:

13 (a) county, city, or town or any subdivision of a county, city, or town, whether incorporated or
14 unincorporated;

15 (b) settlement consisting of not less than 10 families; or

16 (c) public buildings belonging to the state or to any college or university;

17 (40) tramway lines;

18 (41) logging railways;

19 (42) temporary logging roads and banking grounds for the transportation of logs and timber products to
20 public streams, lakes, mills, railroads, or highways for a time that the court or judge may determine. However,
21 the grounds of state institutions may not be used for this purpose.

22 (43) underground reservoirs suitable for storage of natural gas;

23 (44) projects to mine and extract ores, metals, or minerals owned by the ~~condemnor~~ state or its agents
24 located beneath or upon the surface of property where the title to the surface vests in others. However, the use
25 of the surface of property for strip mining or open-pit mining of coal (i.e., any mining method or process in which
26 the strata or overburden is removed or displaced in order to extract the coal) is not a public use, and eminent
27 domain may not be exercised for this purpose.

28 (45) projects to restore and reclaim lands that were strip mined or underground mined for coal and not
29 reclaimed in accordance with Title 82, chapter 4, part 2, and to abate or control adverse effects of strip or
30 underground mining on those lands."

1
2 **Section 5.** Section 70-30-104, MCA, is amended to read:

3 **"70-30-104. What estates and rights in land may be taken.** (1) The following is a classification of the
4 estates and rights in land subject to taking for public use:

5 (a) subject to subsection (2), estates or rights that are necessary, up to and including a fee simple
6 interest, when taken for:

7 (i) public buildings or grounds;

8 (ii) permanent buildings;

9 (iii) an outlet for a flow or a place for the deposit of debris or tailings of a mine;

10 (iv) the mining and extracting of ores, metals, or minerals when the ores, metals, or minerals are owned
11 by the ~~condemnor~~ state or its agents but are located beneath or upon the surface of property for which the title
12 to the surface vests in others; or

13 (v) the underground storage of natural gas by a natural gas public utility as defined in 82-10-301. When
14 the taking is for the underground storage of natural gas, all of the right, title, interest, and estate in the real
15 property and in the subsand stratum, formation, or reservoir taken must be determinable and for all purposes
16 terminates upon abandonment or upon cessation for the period of 1 year of the use for which the property was
17 taken. Upon the abandonment or cessation, the ownership of the residue of natural gas remaining in the reservoir
18 vests in the current owners of the surface property over the reservoir space.

19 (b) the estate or rights in the surface property that are necessary for a reservoir or dam and for the
20 permanent flooding that results from the reservoir or dam, up to the edge of the maximum pool of the reservoir;

21 (c) an easement, leasehold, or other interest, for as long as the interest is necessary for the purpose
22 described in the complaint, or fee simple interest when taken for any other use;

23 (d) the right of entry upon and occupation of land and the right to take from the land any earth, gravel,
24 stones, trees, and timber that may be necessary for some public use.

25 (2) Subject to 60-4-102, an easement is presumed to be sufficient for a project for a public use unless
26 the parties agree that a greater interest should be taken or the ~~condemnor~~ state or its agents shows by a
27 preponderance of the evidence that a greater interest is necessary."
28

29 **Section 6.** Section 70-30-106, MCA, is amended to read:

30 **"70-30-106. Eminent domain not to be used for coal mining in certain cases -- policy.** (1) For the

1 reasons contained in this section, the ~~state's~~ state or its agents' power of eminent domain may not be exercised
 2 to mine and extract coal owned by the ~~condemnor~~ state or its agent located beneath the surface of property for
 3 which the title to the surface is vested in others.

4 (2) Because of the large reserves of and the renewed interest in coal in eastern Montana, coal
 5 development is potentially more destructive to land and watercourses and underground aquifers and potentially
 6 more extensive geographically than the foreseeable development of other ores, metals, or minerals and affects
 7 large areas of land and large numbers of people.

8 (3) In certain areas of Montana referred to in subsection (2), the title to the surface property is vested
 9 in an owner other than the mineral owner and the surface owner is putting that surface property to a productive
 10 use, and it is the public policy of the state to encourage and foster that productive use by the surface owner. To
 11 permit the mineral owner to condemn the surface owner's property is to deprive the surface owner of the right
 12 to use the property in the productive manner that the surface owner determines and is also contrary to public
 13 policy set forth in subsection (5).

14 (4) The magnitude of the potential coal development in eastern Montana will subject landowners to
 15 undue harassment by excessive use of eminent domain.

16 (5) It is the public policy of the state to encourage and foster diversity of land ownership, and the surface
 17 mining of coal and control of large areas of land by the surface coal mining industry would not promote public
 18 policy and further the public interest."

19

20 **Section 7.** Section 70-30-110, MCA, is amended to read:

21 **"70-30-110. Survey and location of property to be taken -- greatest public good -- least private**
 22 **injury.** (1) In all cases in which land is required for public use, the state or its agents ~~in charge of the public use~~
 23 may survey and locate the land to be used. The use must be located in the manner that will be most compatible
 24 with the greatest public good and the least private injury, and the location is subject to the provisions of
 25 70-30-206. The state or its agents ~~in charge of the public use~~ may, after giving 30 days' written notice to the
 26 owners and persons in possession of the land, enter upon the land and make examination, surveys, and maps
 27 of the land. The entry does not constitute a cause of action in favor of the owners of the land except from injuries
 28 resulting from negligence or intentional acts. Upon written request of the state or its agents, the owner shall
 29 provide the names and addresses of all persons who are in possession of the owner's land within 14 days from
 30 receipt of the written notice. The state or its agents shall within 14 days from receipt of that information furnish

1 written notice to the listed persons.

2 (2) Prior to or at the time of rejection of the final written offer as referred to in 70-30-111(4), the
3 ~~condemnee~~ property owner may provide to the ~~condemnor~~ state or its agents the ~~condemnee's~~ property owner's
4 claim of appropriate measures that the ~~condemnee~~ property owner considers necessary to minimize damages
5 to the property directly affected by the project as well as to minimize damages incurred to the remaining parcel
6 of property."

7

8 **Section 8.** Section 70-30-111, MCA, is amended to read:

9 **"70-30-111. Facts necessary to be found before condemnation.** Before property ~~can~~ may be taken,
10 the ~~condemnor~~ state or its agents shall show by a preponderance of the evidence that the public interest requires
11 the taking based on the following findings:

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

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

14 (3) if already being used for a public use, that the public use for which the property is proposed to be
15 used is a more necessary public use;

16 (4) an effort to obtain the property interest sought to be taken was made by submission of a written offer
17 in accordance with [section 2] and the offer was rejected or the offer was rejected in accordance with [section 2]
18 because a property owner did not respond or the state or its agents believed an impasse existed."

19

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

21 **"70-30-207. Appointment of condemnation commissioners -- affidavit -- compensation.** (1) (a)

22 Within 30 days of entry of a preliminary condemnation order, the condemnee shall file a statement of the
23 condemnee's claim of just compensation.

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

29 (2) After the condemnor's deposit is made in accordance with subsection (1), upon the request of the
30 condemnor or the condemnee, the court shall appoint condemnation commissioners. The commission hearing

1 may be waived by written consent of both parties, in which case the proceeding must be conducted in the district
2 court as if the case had been appealed from an award by the commissioners.

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

8 ~~(3)~~(4) Each commissioner:

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

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

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

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

14 ~~(4)~~(5) At the time of the meeting and nominations, there must be filed with the court by each nominating
15 party or judge an affidavit of the person nominated stating substantially the following:

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

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

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

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

27 ~~(5)~~(6) The court shall specify the compensation of the condemnation commissioners, which may not
28 exceed \$250 for each hearing day, including expenses. The condemnor shall pay the compensation of the
29 commissioners."
30

1 **Section 10.** Section 70-30-311, MCA, is amended to read:

2 **"70-30-311. Putting condemnor in possession.** (1) At any time after the filing of the preliminary
3 condemnation order pursuant to 70-30-206 or an order as provided in 60-4-104(4) and (5) and while it retains
4 jurisdiction, the court upon application of the condemnor may make an order that:

5 (a) upon payment into court of the amount of compensation ~~claimed by the condemnee in the~~
6 ~~condemnee's statement of claim of just compensation under 70-30-207 or the amount~~ assessed either by the
7 commissioners or by the jury; or an amount equal to an additional 25% of the condemnor's appraised fair market
8 value of the property sought to be taken, the condemnor is authorized:

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

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

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

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

18 (b) An order under subsection (2)(a) is subject to the condition subsequent that, upon determination
19 of the amount assessed by the commissioners or the jury, if the amount assessed is greater than the amount
20 deposited pursuant to 70-30-207(1)(b), the amount of the deposit must be increased to account for the
21 differences.

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

25 (3) However, when an appeal is taken by the condemnee and the amount deposited with the court
26 pursuant to 70-30-207(1)(b) is the amount assessed by the condemnation commissioners or the jury, the court
27 may require the condemnor before continuing or taking possession, in addition to paying into court the amount
28 assessed, to give a bond or undertaking with sufficient sureties approved by the court and in an amount that the
29 court may direct, conditioned to pay the condemnee any additional damages and costs above the amount
30 assessed, which is finally determined as the amount that the condemnee is entitled to for the taking of the

1 property, and all damages that the condemnee may sustain if for any cause the property is not finally taken for
2 public use.

3 (4) The amount assessed by the commissioners or by the jury on appeal is considered, for the purposes
4 of this section and until reassessed or changed in the further proceedings, as just compensation for the property
5 taken. However, the condemnor, by payment into court of ~~the amount claimed in the answer or the amount~~
6 assessed a deposit in accordance with 70-30-207(1)(b) and subsections (1)(a) and (2)(b) of this section or by
7 giving security as provided in subsection (3), may not be prevented from appealing from the assessment but may
8 appeal in the same manner and with the same effect as if money had not been deposited or security had not been
9 given.

10 (5) (a) Subject to subsection (5)(b), in all cases in which the condemnor deposits the amount ~~of the~~
11 assessment in accordance with subsections (1)(a) and (2)(b), if applicable, and continues in possession or takes
12 possession of the property, as provided in this section, the condemnee, if there is no dispute as to the ownership
13 of the property, may at any time demand and receive upon order of the court all or any part of the money
14 deposited. The demand or receipt may not preclude the condemnee's right of appeal from the assessment.
15 However, if the amount of the assessment is finally reduced on appeal by either party, the condemnee who has
16 received all or any part of the amount deposited is liable to the condemnor for any excess of the amount received
17 over the amount finally assessed, with legal interest on the excess from the time the condemnee received the
18 money deposited. The excess, plus interest, may be recovered by a civil action. Upon any appeal from an
19 assessment by the commissioners to a jury, the jury may make a finding for any amount that it considers
20 appropriate.

21 (b) The court may not order the delivery to any condemnee of more than 75% of the money deposited
22 on the condemnee's account except upon posting of bond by the condemnee equal to the amount in excess of
23 75%, with sureties to be approved by the court, to repay to the condemnor amounts withdrawn that are in excess
24 of the condemnee's final award in the proceedings."
25

26 NEW SECTION. Section 11. Codification instruction. [Sections 1 and 2] are intended to be codified
27 as an integral part of Title 70, chapter 30, part 1, and the provisions of Title 70, chapter 30, part 1, apply to
28 [sections 1 and 2].
29

30 NEW SECTION. Section 12. Saving clause. [This act] does not affect rights and duties that matured,

1 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

2

3 NEW SECTION. **Section 13. Severability.** If a part of [this act] is invalid, all valid parts that are
4 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
5 the part remains in effect in all valid applications that are severable from the invalid applications.

6

7 NEW SECTION. **Section 14. Effective date.** [This act] is effective on passage and approval.

8

- END -