

SENATE BILL NO. 288

INTRODUCED BY VINCENT, OLSON

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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~~ CONDEMNOR IN ACCORDANCE WITH EMINENT DOMAIN LAWS;
8 ESTABLISHING CRITERIA FOR AN APPRAISAL CONDUCTED PURSUANT TO EMINENT DOMAIN LAWS;
9 REQUIRING A CONDEMNOR TO MAKE A DEPOSIT WITH THE COURT BEFORE PROCEEDINGS
10 CONTINUE; ALLOWING CONDEMNNEES TO ACCESS THE DEPOSIT; AMENDING SECTIONS 70-30-101,
11 ~~70-30-102, 70-30-104,~~ 70-30-106, 70-30-110, 70-30-111, 70-30-207, AND 70-30-311, MCA; AND PROVIDING
12 AN IMMEDIATE 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~~ CONDEMNOR or the owner of the property sought to be taken in an
18 eminent domain 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~~ QUALIFIED BY TRAINING APPROVED BY THE FEDERAL HIGHWAY
28 ADMINISTRATION.

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

30 (a) uniform standards of professional appraisal practice established for certified real estate appraisers

1 under 37-54-403; and

2 (b) uniform standards for federal land acquisition.

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

4

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

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

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

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

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

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

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

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

22 (3) After receiving a response to the ~~state or its agents'~~ CONDEMNOR'S offer pursuant to subsection (2),
23 the ~~state or its agents~~ CONDEMNOR may continue negotiations with the owner of the property sought to be taken
24 by providing additional written offers. If the ~~state or its agents provide~~ CONDEMNOR PROVIDES additional written
25 offers to the owner of the property sought to be taken, the property owner shall respond as provided in subsection
26 (2).

27 (4) If the property owner fails to respond, if the offer is rejected, or if, despite receiving a counteroffer, the
28 ~~state or its agents believe~~ CONDEMNOR BELIEVES an impasse exists between the parties after acting pursuant to
29 subsections (1) through (3), the ~~state or its agents~~ CONDEMNOR may declare an impasse by sending written notice
30 to the owner of the property sought to be taken. The notice must be sent to the property owner's property tax

1 address and delivered by certified mail. The notice may refer to a ~~state or its agents'~~ CONDEMNOR'S written offer,
 2 as provided in subsection (1), and may serve as the ~~state or its agents'~~ CONDEMNOR'S final offer pursuant to
 3 subsection (6).

4 (5) (a) Prior to filing a condemnation action in accordance with this chapter, the ~~state or its agents~~
 5 CONDEMNOR shall conduct an appraisal of the subject property in accordance with subsections (5)(b) through
 6 (5)(d).

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

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

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

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

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

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

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

27

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

29 **"70-30-101. Eminent domain defined Definitions.** As used in this chapter, the following definitions
 30 apply:

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

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

5 (3) "CONDEMNOR" MEANS AN ENTITY ABLE TO TAKE PRIVATE PROPERTY IN ACCORDANCE WITH THIS CHAPTER
6 FOR A PUBLIC USE ENUMERATED IN 70-30-102. AN ENTITY MAY OTHERWISE BE DELEGATED THE POWER OF EMINENT
7 DOMAIN IN STATUTE FOR A PUBLIC USE ENUMERATED IN 70-30-102.

8 ~~(3)(4)~~ Eminent domain is "Eminent domain" means the right of the state or its agents in charge of the
9 public use A CONDEMNOR to take private property for public use. This right may be exercised in the manner
10 provided in this chapter.

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

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

15
16 ~~———— **Section 4.** Section 70-30-102, MCA, is amended to read:~~
17 ~~———— **"70-30-102. Public uses enumerated.** Subject to the provisions of this chapter, the right of eminent~~
18 ~~domain may be exercised for the following public uses:~~

19 ~~———— (1) all public uses authorized by the government of the United States;~~

20 ~~———— (2) public buildings and grounds for the use of the state and all other public uses authorized by the~~
21 ~~legislature of the state;~~

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

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

25 ~~———— (5) projects to raise the banks of streams, remove obstructions from streambanks, and widen, deepen,~~
26 ~~or straighten stream channels;~~

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

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

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

- 1 ~~——— (9) stock lanes as provided in 7-14-2621;~~
2 ~~——— (10) parking areas as provided in 7-14-4501 and 7-14-4622;~~
3 ~~——— (11) airport purposes as provided in 7-14-4801, 67-2-301, 67-7-210, and Title 67, chapters 10 and 11;~~
4 ~~——— (12) urban renewal projects as provided in Title 7, chapter 15, parts 42 and 43, except that private~~
5 ~~property may be acquired for urban renewal through eminent domain only if the property is determined to be a~~
6 ~~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~~
7 ~~through eminent domain if the purpose of the project is to increase government tax revenue;~~
8 ~~——— (13) housing authority purposes as provided in Title 7, chapter 15, part 44;~~
9 ~~——— (14) county recreational and cultural purposes as provided in 7-16-2105;~~
10 ~~——— (15) city or town athletic fields and civic stadiums as provided in 7-16-4106;~~
11 ~~——— (16) county cemetery purposes pursuant to 7-11-1021, cemetery association purposes as provided in~~
12 ~~35-20-104, and state veterans' cemetery purposes as provided in 10-2-604;~~
13 ~~——— (17) preservation of historical or archaeological sites as provided in 23-1-102 and 87-1-209(2);~~
14 ~~——— (18) public assistance purposes as provided in 53-2-201;~~
15 ~~——— (19) highway purposes as provided in 60-4-103 and 60-4-104;~~
16 ~~——— (20) common carrier pipelines as provided in 69-13-104;~~
17 ~~——— (21) water supply, water transportation, and water treatment systems as provided in 75-6-313;~~
18 ~~——— (22) mitigation of the release or threatened release of a hazardous or deleterious substance as provided~~
19 ~~in 75-10-720;~~
20 ~~——— (23) the acquisition of nonconforming outdoor advertising as provided in 75-15-123;~~
21 ~~——— (24) screening for or the relocation or removal of junkyards, motor vehicle graveyards, motor vehicle~~
22 ~~wrecking facilities, garbage dumps, and sanitary landfills as provided in 75-15-223;~~
23 ~~——— (25) water conservation and flood control projects as provided in 76-5-1108;~~
24 ~~——— (26) acquisition of natural areas as provided in 76-12-108;~~
25 ~~——— (27) acquisition of water rights for the natural flow of water as provided in 85-1-204;~~
26 ~~——— (28) property and water rights necessary for waterworks as provided in 85-1-209 and 85-7-1904;~~
27 ~~——— (29) conservancy district purposes as provided in 85-9-410;~~
28 ~~——— (30) wharves, docks, piers, chutes, booms, ferries, bridges, private roads, plank and turnpike roads, and~~
29 ~~railroads;~~
30 ~~——— (31) canals, ditches, flumes, aqueducts, and pipes for:~~

- 1 ~~—— (a) supplying mines, mills, and smelters for the reduction of ores;~~
2 ~~—— (b) supplying farming neighborhoods with water and drainage;~~
3 ~~—— (c) reclaiming lands; and~~
4 ~~—— (d) floating logs and lumber on streams that are not navigable;~~
5 ~~—— (32) sites for reservoirs necessary for collecting and storing water. However, reservoir sites must possess~~
6 ~~a public use demonstrable to the district court as the highest and best use of the land.~~
7 ~~—— (33) roads, tunnels, and dumping places for working mines, mills, or smelters for the reduction of ores;~~
8 ~~—— (34) outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines,~~
9 ~~mills, and smelters for the reduction of ores;~~
10 ~~—— (35) an occupancy in common by the owners or the possessors of different mines of any place for the~~
11 ~~flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of~~
12 ~~ores and sites for reservoirs necessary for collecting and storing water for the mines, mills, or smelters. However,~~
13 ~~the reservoir sites must possess a public use demonstrable to the district court as the highest and best use of~~
14 ~~the land.~~
15 ~~—— (36) private roads leading from highways to residences or farms;~~
16 ~~—— (37) telephone or electrical energy lines, except that local government entities as defined in 2-7-501,~~
17 ~~municipal utilities, or competitive electricity suppliers may not use this chapter to acquire existing telephone or~~
18 ~~electrical energy lines and appurtenant facilities owned by a public utility or cooperative for the purpose of~~
19 ~~transmitting or distributing electricity or providing telecommunications services;~~
20 ~~—— (38) telegraph lines;~~
21 ~~—— (39) sewerage of any:~~
22 ~~—— (a) county, city, or town or any subdivision of a county, city, or town, whether incorporated or~~
23 ~~unincorporated;~~
24 ~~—— (b) settlement consisting of not less than 10 families; or~~
25 ~~—— (c) public buildings belonging to the state or to any college or university;~~
26 ~~—— (40) tramway lines;~~
27 ~~—— (41) logging railways;~~
28 ~~—— (42) temporary logging roads and banking grounds for the transportation of logs and timber products to~~
29 ~~public streams, lakes, mills, railroads, or highways for a time that the court or judge may determine. However,~~
30 ~~the grounds of state institutions may not be used for this purpose.~~

1 ~~_____ (43) underground reservoirs suitable for storage of natural gas;~~
 2 ~~_____ (44) projects to mine and extract ores, metals, or minerals owned by the condemnor state or its agents~~
 3 ~~located beneath or upon the surface of property where the title to the surface vests in others. However, the use~~
 4 ~~of the surface of property for strip mining or open-pit mining of coal (i.e., any mining method or process in which~~
 5 ~~the strata or overburden is removed or displaced in order to extract the coal) is not a public use, and eminent~~
 6 ~~domain may not be exercised for this purpose.~~

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

10
 11 ~~_____ **Section 5.** Section 70-30-104, MCA, is amended to read:~~
 12 ~~_____ **"70-30-104. What estates and rights in land may be taken.** (1) The following is a classification of the~~
 13 ~~estates and rights in land subject to taking for public use:~~

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

16 ~~_____ (i) public buildings or grounds;~~

17 ~~_____ (ii) permanent buildings;~~

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

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

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

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

30 ~~_____ (c) an easement, leasehold, or other interest, for as long as the interest is necessary for the purpose~~

1 described in the complaint, or fee simple interest when taken for any other use;
 2 ~~—— (d) the right of entry upon and occupation of land and the right to take from the land any earth, gravel,~~
 3 ~~stones, trees, and timber that may be necessary for some public use.~~
 4 ~~—— (2) Subject to 60-4-102, an easement is presumed to be sufficient for a project for a public use unless~~
 5 ~~the parties agree that a greater interest should be taken or the condemnor state or its agents shows by a~~
 6 ~~preponderance of the evidence that a greater interest is necessary."~~

7

8 **Section 4.** Section 70-30-106, MCA, is amended to read:

9 **"70-30-106. Eminent domain not to be used for coal mining in certain cases -- policy.** (1) For the
 10 reasons contained in this section, the ~~state's state or its agents~~ power of eminent domain may not be exercised
 11 to mine and extract coal owned by the ~~condemnor state or its agent~~ CONDEMNOR located beneath the surface of
 12 property for which the title to the surface is vested in others.

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

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

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

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

28

29 **Section 5.** Section 70-30-110, MCA, is amended to read:

30 **"70-30-110. Survey and location of property to be taken -- greatest public good -- least private**

1 **injury.** (1) In all cases in which land is required for public use, the ~~state or its agents in charge of the public use~~
 2 CONDEMNOR may survey and locate the land to be used. The use must be located in the manner that will be most
 3 compatible with the greatest public good and the least private injury, and the location is subject to the provisions
 4 of 70-30-206. The ~~state or its agents in charge of the public use~~ CONDEMNOR may, after giving 30 days' written
 5 notice to the owners and persons in possession of the land, enter upon the land and make examination, surveys,
 6 and maps of the land. The entry does not constitute a cause of action in favor of the owners of the land except
 7 from injuries resulting from negligence or intentional acts. Upon written request of the ~~state or its agents~~
 8 CONDEMNOR, the owner shall provide the names and addresses of all persons who are in possession of the
 9 owner's land within 14 days from receipt of the written notice. The ~~state or its agents~~ CONDEMNOR shall within 14
 10 days from receipt of that information furnish written notice to the listed persons.

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

16
 17 **Section 6.** Section 70-30-111, MCA, is amended to read:
 18 **"70-30-111. Facts necessary to be found before condemnation.** Before property ~~can~~ may be taken,
 19 the ~~condemnor~~ ~~state or its agents~~ CONDEMNOR shall show by a preponderance of the evidence that the public
 20 interest requires the taking based on the following findings:

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

28
 29 **Section 7.** Section 70-30-207, MCA, is amended to read:
 30 **"70-30-207. Appointment of condemnation commissioners -- affidavit -- compensation.** (1) (a)

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

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

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

12 ~~(2)~~(3) The court shall appoint three qualified, disinterested condemnation commissioners; unless
13 appointment has been waived. One of the commissioners must be nominated by the condemnor. One of the
14 commissioners must be nominated by the condemnee. The third commissioner is the presiding officer and must
15 be nominated by the two commissioners previously nominated. However, if the two commissioners fail to make
16 the choice at the time of their appointment, then the nomination must be made by the presiding judge.

17 ~~(3)~~(4) Each commissioner:

- 18 (a) must have sufficient knowledge of the English language;
19 (b) must be a resident of a county within the judicial district in which the action is pending;
20 (c) may not be related within the sixth degree of consanguinity to any party; and
21 (d) may not stand in the relation of guardian and ward, master and servant, debtor and creditor, principal
22 and agent, or partner or surety to any party.

23 ~~(4)~~(5) At the time of the meeting and nominations, there must be filed with the court by each nominating
24 party or judge an affidavit of the person nominated stating substantially the following:

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

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

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

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

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

9

10 **Section 8.** Section 70-30-311, MCA, is amended to read:

11 **"70-30-311. Putting condemnor in possession.** (1) At any time after the filing of the preliminary
 12 condemnation order pursuant to 70-30-206 or an order as provided in 60-4-104(4) and (5) and while it retains
 13 jurisdiction, the court upon application of the condemnor may make an order that:

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

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

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

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

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

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

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

4 (3) However, when an appeal is taken by the condemnee and the amount deposited with the court
5 pursuant to 70-30-207(1)(b) is the amount assessed by the condemnation commissioners or the jury, the court
6 may require the condemnor before continuing or taking possession, in addition to paying into court the amount
7 assessed, to give a bond or undertaking with sufficient sureties approved by the court and in an amount that the
8 court may direct, conditioned to pay the condemnee any additional damages and costs above the amount
9 assessed, which is finally determined as the amount that the condemnee is entitled to for the taking of the
10 property, and all damages that the condemnee may sustain if for any cause the property is not finally taken for
11 public use.

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

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

30 (b) The court may not order the delivery to any condemnee of more than 75% of the money deposited

1 on the condemnee's account except upon posting of bond by the condemnee equal to the amount in excess of
 2 75%, with sureties to be approved by the court, to repay to the condemnor amounts withdrawn that are in excess
 3 of the condemnee's final award in the proceedings."

4
 5 **NEW SECTION. Section 9. Codification instruction.** [Sections 1 and 2] are intended to be codified
 6 as an integral part of Title 70, chapter 30, part 1, and the provisions of Title 70, chapter 30, part 1, apply to
 7 [sections 1 and 2].

8
 9 ~~COORDINATION SECTION. SECTION 12. COORDINATION INSTRUCTION. IF [THIS ACT] IS PASSED AND~~
 10 ~~APPROVED AND SENATE BILL NO. 180 IS PASSED AND APPROVED, THEN THE AMENDMENTS TO 70-30-101 CONTAINED IN~~
 11 ~~[SECTION 3 OF THIS ACT] ARE VOID, AND 70-30-101 MUST BE AMENDED AS FOLLOWS:~~

12 ~~"70-30-101. Eminent domain defined Definitions. As used in this chapter, the following definitions~~
 13 ~~apply:~~

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

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

18 ~~(3) Eminent domain is "Eminent domain" means the right of the state or its agents in charge of the public~~
 19 ~~use to take private property for public use. This right may be exercised in the manner provided in this chapter.~~

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

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

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

30

1 ~~COORDINATION SECTION. SECTION 13. COORDINATION INSTRUCTION. IF [THIS ACT] IS PASSED AND~~
 2 ~~APPROVED AND SENATE BILL NO. 180 IS PASSED AND APPROVED, THEN THE AMENDMENTS TO 70-30-102 CONTAINED IN~~
 3 ~~[SECTION 4 OF THIS ACT] ARE VOID, AND 70-30-102 MUST BE AMENDED AS FOLLOWS:~~

4 ~~"70-30-102. Public uses enumerated.~~ Subject to the provisions of this chapter, the right of eminent
 5 domain may be exercised for the following public uses:

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

7 ~~(2) public buildings and grounds for the use of the state and all other public uses authorized by the~~
 8 ~~legislature of the state;~~

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

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

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

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

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

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

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

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

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

21 ~~(12) urban renewal projects as provided in Title 7, chapter 15, parts 42 and 43, except that private~~
 22 ~~property may be acquired for urban renewal through eminent domain only if the property is determined to be a~~
 23 ~~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~~
 24 ~~through eminent domain if the purpose of the project is to increase government tax revenue;~~

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

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

27 ~~(15) city or town athletic fields and civic stadiums as provided in 7-16-4106;~~

28 ~~(16) county cemetery purposes pursuant to 7-11-1021, cemetery association purposes as provided in~~
 29 ~~35-20-104, and state veterans' cemetery purposes as provided in 10-2-604;~~

30 ~~(17) preservation of historical or archaeological sites as provided in 23-1-102 and 87-1-209(2);~~

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

1 the land:

2 ~~——— (36) private roads leading from highways to residences or farms;~~

3 ~~——— (37) telephone or electrical energy lines, except that:~~

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

8 ~~——— (b) a merchant transmission line may not use this chapter to acquire property;~~

9 ~~——— (38) telegraph lines;~~

10 ~~——— (39) sewerage of any:~~

11 ~~——— (a) county, city, or town or any subdivision of a county, city, or town, whether incorporated or~~
12 ~~unincorporated;~~

13 ~~——— (b) settlement consisting of not less than 10 families; or~~

14 ~~——— (c) public buildings belonging to the state or to any college or university;~~

15 ~~——— (40) tramway lines;~~

16 ~~——— (41) logging railways;~~

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

20 ~~——— (43) underground reservoirs suitable for storage of natural gas;~~

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

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

29

30 COORDINATION SECTION. SECTION 10. COORDINATION INSTRUCTION. IF HOUSE BILL NO. 417 AND [THIS

1 ACT] ARE PASSED AND APPROVED AND IF BOTH CONTAIN A SECTION THAT AMENDS 70-30-111, THEN THE SECTIONS
 2 AMENDING 70-30-111 ARE VOID AND 70-30-111 MUST BE AMENDED AS FOLLOWS:

3 **"70-30-111. Facts necessary to be found before condemnation.** (1) Before property ~~can~~ may be
 4 taken, the condemnor shall show by a preponderance of the evidence that the public interest requires the taking
 5 based on the following findings:

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

7 ~~(2)~~(b) the taking is necessary to the public use;

8 ~~(3)~~(c) if already being used for a public use, that the public use for which the property is proposed to be
 9 used is a more necessary public use;

10 ~~(4)~~(d) an effort to obtain the property interest sought to be taken was made by submission of a final
 11 written offer prior to initiating condemnation proceedings and in accordance with [section 2 of Senate Bill No. 288]
 12 and the final written offer was:

13 (i) rejected; or

14 (ii) rejected in accordance with [section 2 of Senate Bill No. 288] because a property owner did not
 15 respond or the condemnor believed an impasse existed.

16 (2) Subsection (1)(d) does not prohibit the condemnor from making further offers in an effort to obtain
 17 the property interest sought to be taken, but offers made after the final written offer is submitted pursuant to
 18 subsection (1)(d) may not be used to determine whether the condemnee prevails pursuant to 70-30-305. The
 19 condemnor shall disclose to a property owner that further offers made in accordance with this subsection are not
 20 considered the final written offer."

21
 22 NEW SECTION. Section 11. Saving clause. [This act] does not affect rights and duties that matured,
 23 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

24
 25 NEW SECTION. Section 12. Severability. If a part of [this act] is invalid, all valid parts that are
 26 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
 27 the part remains in effect in all valid applications that are severable from the invalid applications.

28
 29 NEW SECTION. Section 13. Effective date. [This act] is effective on passage and approval.

30 - END -