

SENATE BILL NO. 7

INTRODUCED BY M. COLE

BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO EMINENT DOMAIN FOR THE SOLE PURPOSE OF MODERNIZING THE LANGUAGE, INCLUDING REFERENCES TO THE PROCEDURE TO BE FOLLOWED IN EMINENT DOMAIN ACTIONS, AND SPECIFICALLY ENUMERATING THE PUBLIC USES FOR WHICH THE POWER OF EMINENT DOMAIN MAY BE EXERCISED; AND AMENDING SECTIONS 7-1-4124, 7-5-4106, 7-7-4404, 7-13-2218, 7-13-4404, 7-13-4405, 7-13-4406, 7-14-101, 7-14-1625, 7-14-2101, 7-14-2108, 7-14-2123, 7-14-2621, 7-14-2803, 7-14-2829, 7-14-4501, 7-14-4622, 7-14-4626, 7-14-4801, 7-15-4204, 7-15-4258, 7-15-4259, 7-15-4460, 7-15-4462, 7-16-2105, 7-16-4106, 7-35-2201, 15-70-301, 15-70-701, 23-1-102, 35-18-106, 35-20-104, 53-2-201, 60-1-103, 60-5-104, 67-2-301, 67-5-202, 67-6-301, 67-10-102, 67-10-103, 67-10-201, 67-10-205, 67-10-221, 67-11-201, 67-11-204, 67-11-231, 67-11-401, 69-13-104, 69-14-513, 69-14-536, 69-14-552, 70-30-102, 70-30-103, 70-30-104, 70-30-105, 70-30-106, 70-30-107, 70-30-108, 70-30-109, 70-30-110, 70-30-111, 70-30-202, 70-30-203, 70-30-206, 70-30-207, 70-30-301, 70-30-302, 70-30-303, 70-30-304, 70-30-305, 70-30-306, 70-30-307, 70-30-308, 70-30-309, 70-30-310, 70-30-311, 70-30-312, 70-30-314, 70-30-315, 70-30-321, 70-30-322, 70-31-102, 70-31-104, 70-31-105, 70-31-301, 70-31-311, 70-32-216, 75-10-715, 75-10-720, 75-15-123, 75-15-223, 76-5-1108, 76-5-1111, 76-6-105, 76-12-108, 76-12-110, 82-2-221, 82-2-222, 82-2-224, 82-10-303, 82-10-304, 82-10-305, 85-1-204, 85-1-209, 85-7-1411, 85-7-1904, 85-7-1932, 85-9-410, AND 87-1-209, MCA."

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

Section 1. Section 7-1-4124, MCA, is amended to read:

"7-1-4124. Powers. A municipality with general powers has the power, subject to the provisions of state law, to:

- (1) enact ordinances and resolutions;
- (2) sue and be sued;



- 1 (3) buy, sell, mortgage, rent, lease, hold, manage, or dispose of any interest in real or personal
- 2 property;
- 3 (4) contract with persons, corporations, or any other governmental entity;
- 4 (5) pay debts and expenses;
- 5 (6) borrow money;
- 6 (7) solicit and accept bequests, donations, or grants of money, property, services, or other
- 7 advantages and comply with any condition that is not contrary to the public interest;
- 8 (8) execute documents necessary to receive money, property, services, or other advantages from
- 9 the state government, the federal government, or any other source;
- 10 (9) make grants and loans of money, property, and services for public purposes;
- 11 (10) require the attendance of witnesses and production of documents relevant to matters being
- 12 considered by the governing body;
- 13 (11) hire, direct, and discharge employees and appoint and remove members of boards;
- 14 (12) ratify any action of the municipality or its officers or employees ~~which~~ that could have been
- 15 approved in advance;
- 16 (13) have a corporate seal and flag;
- 17 (14) acquire by eminent domain, as provided in Title 70, chapter 30, any interest in property ~~to~~
- 18 ~~provide any service or facility~~ for a public use authorized by law;
- 19 (15) initiate a civil action to restrain or enjoin violation of an ordinance;
- 20 (16) enter private property, obtaining warrants when necessary, for the purpose of enforcing
- 21 ordinances that affect the general welfare and public safety;
- 22 (17) conduct a census;
- 23 (18) conduct inventories of public property and preparatory studies;
- 24 (19) condemn and demolish hazardous structures;
- 25 (20) purchase insurance and establish self-insurance plans;
- 26 (21) impound animals and other private property creating a nuisance or obstructing a street or
- 27 highway;
- 28 (22) establish quarantines;
- 29 (23) classify all violations of city ordinances as civil infractions, with civil penalties, as provided
- 30 in 7-1-4150; and

1 (24) exercise powers not inconsistent with law necessary for effective administration of authorized
2 services and functions."

3

4 **Section 2.** Section 7-5-4106, MCA, is amended to read:

5 **"7-5-4106. Power of condemnation.** The city or town council ~~has power to~~ may condemn private
6 property for ~~opening, establishing, widening, or altering any street, alley, park, sewer, or waterway in the~~
7 ~~city or town and for establishing, constructing, and maintaining any sewer, waterway, or drain ditch~~
8 ~~outside of the corporate limits of the municipality or for any other municipal and public use~~ listed in
9 70-30-102. The ordinance authorizing the taking of private property for ~~any such a~~ public use is conclusive
10 as to the necessity of the taking and must conform to and ~~the proceedings thereunder had~~ be conducted
11 as provided in Title 70, chapters 30 and 31, concerning eminent domain."

12

13 **Section 3.** Section 7-7-4404, MCA, is amended to read:

14 **"7-7-4404. Authority to acquire, construct, maintain, and operate various undertakings.** ~~In addition~~
15 ~~to the powers which it may now have, any~~ A municipality ~~shall have power~~ under this part to may:

16 (1) ~~construct, acquire by gift, purchase, or the exercise of the right of eminent domain,~~
17 ~~reconstruct, improve, better, or extend any undertaking, within or~~ without outside of the municipality or
18 ~~partially within or partially~~ without outside of the municipality, and acquire by gift, purchase, or the
19 exercise of the right of eminent domain pursuant to Title 70, chapter 30, any undertaking and ~~lands~~ land
20 or rights in land or water rights in connection ~~therewith~~ with the undertaking;

21 (2) operate and maintain any undertaking and furnish the service, facilities, and commodities
22 ~~thereof~~ of the undertaking for its own use and for the use of public and private consumers within or
23 ~~without~~ outside of the territorial boundaries of ~~such~~ the municipality; and

24 (3) prescribe and collect rates, fees, and charges for the services, facilities, and commodities
25 furnished by ~~such~~ the undertaking."

26

27 **Section 4.** Section 7-13-2218, MCA, is amended to read:

28 **"7-13-2218. District powers related to water and sewer projects.** Any A district that is
29 incorporated as provided in this part may:

30 (1) construct, purchase, lease, or otherwise acquire and operate and maintain water rights,

1 waterworks, sanitary sewerworks, storm sewerworks, canals, conduits, reservoirs, lands, and rights useful
 2 or necessary to store, conserve, supply, produce, convey, or drain water or sewage for purposes beneficial
 3 to the district. Beneficial purposes include but are not limited to flood prevention, flood control, irrigation,
 4 drainage, municipal and industrial water supplies, domestic water supplies, wildlife, recreation, pollution
 5 abatement, livestock water supply, and other similar purposes.

6 (2) if the incorporators of the district are members of a private, nonprofit water association that
 7 was formed under the laws of this state, acquire by eminent domain, pursuant to Title 70, chapter 30,
 8 from that water association any type of property referred to in this section;

9 (3) store water for the benefit of the district;

10 (4) conserve water for future use;

11 (5) appropriate, acquire, and conserve water and water rights for the purposes of the district;

12 (6) in the name of the district, commence, maintain, intervene in, ~~and~~ compromise, ~~in the name~~
 13 ~~of the district,~~ and assume the costs of any action or proceeding;

14 (a) involving or affecting the ~~ownership or~~ use of ~~waters~~ water, water rights, or sewer rights
 15 within the district that are used or useful for any purpose of the district or a benefit to any land situated
 16 in the district;

17 ~~(4)(b)~~ commence, maintain, intervene in, defend, and compromise actions and proceedings to
 18 prevent interference with or diminution of the natural flow of any stream or natural subterranean supply
 19 of ~~waters~~ water that is used or useful for any purpose of the district or that is a common benefit to the
 20 lands within the district or its inhabitants;

21 ~~(5)(c)~~ commence, maintain, and defend actions and proceedings to prevent any interference with
 22 the ~~waters~~ water or water or sewer rights referred to in this section as that may endanger the inhabitants
 23 or lands of the district;

24 ~~(6)(7)~~ lease or purchase and carry on and maintain ~~from any person, firm, or public or private~~
 25 ~~corporation, with the privilege of purchase or otherwise,~~ existing water rights, waterworks, sewerworks,
 26 canals, or reservoir systems; ~~and carry on and maintain them;~~

27 ~~(7)(8)~~ sell water or the use of water for household, ~~or~~ domestic, ~~or~~ other similar purposes, ~~or~~ sell
 28 sewer service, and, whenever there is a surplus of water or sewerworks capacity, sell or otherwise dispose
 29 of the water or sewerworks capacity to municipalities, ~~or~~ towns, ~~or~~ ~~to~~ consumers located within or outside
 30 of the boundaries of the district;

1 ~~(9)~~(9) retain the services of architects and engineers for designing, preparing a feasibility study
2 for, and drawing plans and specifications ~~of~~ for a water or sewer system for the district, with the cost of
3 these services apportioned and assigned against properties in the district; and

4 ~~(9)~~(10) establish, by ordinance or resolution, rules and regulations for the operation, maintenance,
5 use, and availability of any of ~~its~~ the district's systems or improvements, including but not limited to
6 connection procedures, service termination, and the payment of rates and charges, including penalties and
7 interest charges for delinquent accounts."

8

9 **Section 5.** Section 7-13-4404, MCA, is amended to read:

10 **"7-13-4404. Use of eminent domain powers to acquire water supply system.** (1) ~~In case~~ If
11 agreement is not reached pursuant to 7-13-4403, then the city or town shall proceed to acquire the plant
12 or water supply under ~~the laws relating to the taking of private property for public use~~ Title 70, chapter
13 30.

14 (2) ~~Any~~ A city or town acquiring property under ~~the laws relating to the taking of private property~~
15 ~~for public use~~ Title 70, chapter 30, shall ~~make payment~~ pay the amount of compensation to the owner ~~or~~
16 ~~owners~~ of the plant or water supply, ~~of the value thereof legally determined,~~ within 6 months from ~~and~~
17 ~~after~~ the date that final judgment is entered in the condemnation proceedings."

18

19 **Section 6.** Section 7-13-4405, MCA, is amended to read:

20 **"7-13-4405. Acquisition of water rights and other necessary property.** For the purpose of
21 providing the city or town with an adequate water supply for municipal and domestic purposes, the city
22 or town council shall procure appropriate water rights ~~and title to the same~~ and the necessary real and
23 personal property to make ~~said rights and~~ an adequate water supply available. The water rights and
24 property may be acquired by purchase, appropriation, location, condemnation pursuant to Title 70, chapter
25 30, or otherwise in any other legal manner."

26

27 **Section 7.** Section 7-13-4406, MCA, is amended to read:

28 **"7-13-4406. Control over territory occupied by water supply system -- taxation and condemnation**
29 **powers.** (1) Cities and towns ~~shall~~ have jurisdiction and control;

30 (a) over the territory occupied by their public works;

1 **(b)** over and along the line of reservoirs, streams, trenches, pipes, drains, and other appurtenances
 2 used in the construction and operation of ~~such the public~~ works; and ~~also~~
 3 **(c)** over the source of streams from which water is taken for the enforcement of its sanitary
 4 ordinances, the abatement of nuisances, and the general preservation of the purity of its water supply;
 5 **(2)** ~~with power to~~ Cities and towns may enact all ordinances and regulations necessary to ~~carry~~
 6 ~~the powers hereby conferred into effect~~ implement subsection (1). For this purpose, the city or town ~~shall~~
 7 ~~be authorized to~~ may condemn private property in the manner provided ~~by law~~ in Title 70, chapter 30, and
 8 ~~shall have authority to~~ may levy a ~~just and equitable~~ tax on all consumers of water for the purpose of
 9 defraying the expenses of ~~its~~ procurement."

10

11 **Section 8.** Section 7-14-101, MCA, is amended to read:

12 **"7-14-101. Acquisition of property for controlled-access facility.** The highway authorities of the
 13 counties, incorporated cities, and towns may, respectively or in cooperation with each other or the state,
 14 ~~may~~ acquire private or public property and property rights for controlled-access highways or
 15 controlled-access facilities and service roads. ~~Such~~ The property rights may include rights of access, air,
 16 view, and light. ~~They~~ The property rights may be acquired by gift, devise, purchase, or condemnation in
 17 the same manner ~~as may now or hereafter be authorized by law for the acquisition of property or property~~
 18 ~~rights in connection with highways, roads, and streets in their respective jurisdictions~~ provided in Title 60,
 19 chapter 4, part 1, and Title 70, chapter 30."

20

21 **Section 9.** Section 7-14-1625, MCA, is amended to read:

22 **"7-14-1625. Railroad acquisition and operation -- permits -- eminent domain.** (1) Within the
 23 boundaries of the authority, the authority may establish, acquire, construct, purchase, improve, maintain,
 24 equip, operate, regulate, and protect railroads and railroad facilities, including but not limited to terminal
 25 buildings, roadways, crossings, bridges, causeways, tunnels, equipment, and rolling stock, ~~as that~~ may
 26 be necessary to carry out the provisions of this part.

27 (2) The authority may apply to a public agency for permits, ~~consents, authorizations,~~ and
 28 approvals required for the acquisition and operation of a railroad and take all actions necessary to comply
 29 with ~~their~~ conditions required in a permit or approval.

30 (3) The authority may acquire property for a public ~~purpose~~ use, as provided in Title 70, chapter

1 30, in the same manner as a county, except that the authority does not have the power of eminent domain
 2 with respect to property owned by another authority or by a political subdivision or property owned by a
 3 railroad corporation unless the interstate commerce commission or another ~~authority~~ entity with the power
 4 to make the finding has found that the public convenience and necessity permit discontinuance of rail
 5 service on the property."

6

7 **Section 10.** Section 7-14-2101, MCA, is amended to read:

8 **"7-14-2101. General powers of county relating to roads and bridges -- definitions.** (1) The board
 9 of county commissioners, under the limitations and restrictions that are prescribed by law, may:

10 (a) (i) lay out, maintain, control, and manage county roads and bridges within the county;

11 (ii) subject to 15-10-420, levy taxes for the laying out, maintenance, control, and management of
 12 the county roads and bridges within the county as provided by law;

13 (b) (i) in the exercise of sound discretion, jointly with other counties, lay out, maintain, control,
 14 manage, and improve county roads and bridges in adjacent counties, wholly or in part as agreed upon
 15 between the boards of the counties concerned;

16 (ii) subject to 15-10-420, levy taxes for the laying out, maintenance, control, management, and
 17 improvement of county roads and bridges in adjacent counties or shared jointly with other counties, as
 18 agreed upon between the boards of the counties concerned and as provided by law;

19 (c) (i) enter into agreements for adjusted annual contributions over not more than 6 years toward
 20 the cost of joint highway or bridge construction projects entered into in cooperation with other counties,
 21 the state, or the United States;

22 (ii) subject to 15-10-420, place a joint project in the budget and levy taxes for a joint project as
 23 provided by law.

24 (2) ~~(a)~~ Unless the context requires otherwise, for the purposes of this chapter, the ~~term~~ following
 25 definitions apply:

26 (a) "bridge" includes rights-of-way or other interest in land, abutments, superstructures, piers, and
 27 approaches except dirt fills:

28 (b) "county road" means:

29 (i) a road that is petitioned by freeholders, approved by resolution, and opened by a board of
 30 county commissioners in accordance with this title;

1 (ii) a road that is dedicated for public use in the county and approved by resolution by a board of
2 county commissioners; or

3 (iii) a road that has been acquired by eminent domain pursuant to Title 70, chapter 30, and
4 accepted by resolution as a county road by a board of county commissioners.

5 ~~(b)~~(3) (a) Following a public hearing, a board of county commissioners may accept by resolution
6 a road that has not previously been considered a county road but that has been laid out, constructed, and
7 maintained with state department of transportation or county funds.

8 ~~(e)~~(b) A survey is not required of an existing county road that is accepted by resolution by a board
9 of county commissioners.

10 ~~(d)~~(c) A road that is abandoned by the state may be designated as a county road upon the
11 acceptance and approval by resolution of a board of county commissioners.

12 ~~(e) Unless the context requires otherwise, the term "bridge" includes rights-of-way or other
13 interest in land, abutments, superstructures, piers, and approaches except dirt fills."~~

14

15 **Section 11.** Section 7-14-2108, MCA, is amended to read:

16 **"7-14-2108. Recording of instruments related to acquisition of right-of-way.** (1) When a
17 right-of-way is voluntarily given or purchased, ~~an~~ a written instrument ~~in writing~~ conveying the
18 right-of-way and incidents ~~thereto~~ to the right-of-way must be signed and acknowledged by the person
19 making it. ~~#~~ The instrument must then be recorded in the office of the clerk of the county where the land
20 is located.

21 (2) When a right-of-way is condemned pursuant to Title 70, chapter 30, a certified copy of the
22 judgment of the court must be made. ~~#~~ The copy must then be filed in the office of the clerk of the county
23 where the land is located.

24 (3) Both types of instruments ~~shall~~ must particularly describe the land."
25

26 **Section 12.** Section 7-14-2123, MCA, is amended to read:

27 **"7-14-2123. Acquisition of machinery and materials.** (1) Out of the county road fund, ~~each~~ a
28 board of county commissioners may:

29 (a) purchase and operate grading and other machinery necessary or desirable for the improvement
30 of the county roads;

1 (b) acquire deposits or quarries of suitable road-building material by purchase, condemnation
2 pursuant to Title 70, chapter 30, or lease.

3 (2) ~~Each~~ A board may also acquire ~~such~~ road-building material by gift."
4

5 **Section 13.** Section 7-14-2621, MCA, is amended to read:

6 **"7-14-2621. Establishment and alteration of stock lanes.** (1) A stock lane is a county road
7 established and maintained for the driving and travel of livestock. ~~It shall be~~ A stock lane may not be less
8 than 60 feet wide. The width ~~shall~~ must be determined by the board in the order creating it.

9 (2) Upon presentation of a proper petition, ~~each~~ a board may establish, alter, or vacate stock lanes
10 when it ~~deems~~ considers it expedient and necessary for the convenience of the public and for the
11 convenience of travel on established roads ~~now established~~. ~~Any~~ A stock lane may adjoin and parallel a
12 county road and ~~shall~~ must be described in the petition for creation and in the order of the board creating
13 ~~it~~ the stock lane.

14 (3) The provisions of this part and the general laws relating to establishing, altering, and vacating
15 county roads, including the exercise of the right of eminent domain as provided in Title 70, chapter 30,
16 ~~shall~~ apply to stock lanes. References in all petitions, orders, and proceedings ~~shall~~ must be to stock lanes
17 in order to differentiate them from other highways."
18

19 **Section 14.** Section 7-14-2803, MCA, is amended to read:

20 **"7-14-2803. Establishment and operation of public ferry or wharf upon petition.** When ~~it shall be~~
21 ~~made to appear by~~ a petition to ~~any~~ a board of county commissioners ~~in this state~~ indicates that it is
22 necessary to ~~keep~~ establish and maintain a public ferry across or a wharf at any unfordable stream, lake,
23 estuary, or bay, ~~any~~ the county ~~within the state~~, through its board of county commissioners, ~~is hereby~~
24 ~~authorized to~~ may construct a ferry or wharf or ~~to~~ may purchase or acquire a ferry or wharf by
25 condemnation, as provided in Title 70, chapter 30, ~~or purchase and to may operate,~~ and maintain, ~~direct,~~
26 regulate, and control the operation of a ferry across or a wharf at any unfordable stream, lake, estuary,
27 or bay within or bordering ~~on said~~ the county, ~~together with~~ The county may also acquire, operate, and
28 maintain all the necessary boats, grounds, roads, approaches, landings, and improvements pertaining
29 thereto, to the ferry or wharf. ~~with full jurisdiction and authority to operate and maintain the same~~ The
30 county may operate the ferry or wharf for free or for toll may charge for the use."

1

2 **Section 15.** Section 7-14-2829, MCA, is amended to read:

3 **"7-14-2829. Acquisition of land for ferry.** When ~~there are~~ lands are necessary for the
4 construction, erection, or use of ~~such a~~ ferry ~~which that~~ cannot be procured by agreement between the
5 owner of the ferry and the landowner, the right-of-way and all other lands necessary for the use and
6 construction or erection ~~thereof~~ of the ferry may be acquired by condemnation as provided in Title 70,
7 chapter 30."

8

9 **Section 16.** Section 7-14-4501, MCA, is amended to read:

10 **"7-14-4501. Acquisition, construction, and maintenance of parking areas.** A city or town council
11 ~~shall have power to~~ may:

12 (1) acquire by lease, gift, purchase, or condemnation pursuant to Title 70, chapter 30, lots or
13 lands for use as parking areas for motor vehicles;

14 (2) construct and maintain ~~thereon~~ on the acquired land or on any premises owned or under lease
15 by ~~such~~ the city or town suitable parking facilities for the use of the public and for general traffic control;
16 and

17 (3) ~~make charges~~ charge for the use of ~~such~~ parking facilities."

18

19 **Section 17.** Section 7-14-4622, MCA, is amended to read:

20 **"7-14-4622. Powers of parking commission related to provision of parking services.** For the
21 purpose of offstreet parking, each parking commission, subject to the limitations imposed by this part, ~~shall~~
22 ~~have the following powers~~ may:

23 (1) ~~to~~ purchase, lease, obtain option upon, or acquire by gift, grant, bequest, devise, or otherwise
24 any real or personal property or any interest ~~therein~~ in real or personal property, together with any
25 improvements ~~thereon~~ on real property;

26 (2) ~~to~~ subject to 7-14-4626, acquire by the exercise of the power of eminent domain, as provided
27 in Title 70, chapter 30, any property ~~in accordance with the applicable provisions of the law of eminent~~
28 ~~domain~~ upon approval of the city council;

29 (3) ~~to~~ sell, lease, exchange, transfer, assign, or otherwise dispose of any real or personal property
30 or any interest ~~therein~~ in real or personal property;

1 (4) ~~to~~ lay out, open, extend, widen, straighten, establish, or change the grade, in whole or in part,
2 of public parking facilities and public rights-of-way necessary or convenient ~~therefor~~ for offstreet parking;

3 (5) ~~to~~ insure or provide for the insurance of any real or personal property or operation of the
4 parking commission against risks or hazards;

5 (6) ~~to~~ acquire, construct, rent, lease, maintain, and repair ~~such~~ real and personal property used
6 for parking services ~~or any portion thereof~~, either on behalf of the parking commission or as an agent of
7 the city, including the leasing of the operation ~~thereof~~ of the offstreet parking;

8 (7) ~~to~~ regulate onstreet parking ~~where~~ when it remains in use, in coordination with offstreet
9 parking, subject to traffic regulations imposed by the state."

10

11 **Section 18.** Section 7-14-4626, MCA, is amended to read:

12 **"7-14-4626. Limitation on power of eminent domain.** (1) ~~Notwithstanding the provisions of~~
13 ~~7-14-4622(2), no~~ A parking commission may not acquire the property of a ~~state public body~~ may be
14 acquired entity without ~~its~~ the entity's consent.

15 (2) ~~No~~ A parking commission or the city may not acquire an existing parking facility ~~shall be~~
16 acquired by the exercise of the power of eminent domain, as provided in Title 70, chapter 30, by a
17 commission or the city except after a public hearing, ~~following~~ A notice of the date, time, place, and
18 purpose of ~~such~~ the hearing must be published once not less than 10 or more than 20 days prior to the
19 date of ~~such~~ the hearing."

20

21 **Section 19.** Section 7-14-4801, MCA, is amended to read:

22 **"7-14-4801. Acquisition of landing fields and parking areas for aircraft.** ~~The~~ A city or town council
23 ~~has power to~~ may acquire by lease, gift, purchase, or condemnation pursuant to Title 70, chapter 30, lots
24 or lands for landing fields or parking areas for aircraft, within or ~~without~~ outside of the corporate limits of
25 the municipality, ~~and to~~ The city or town council may exercise municipal jurisdiction over the lots or lands
26 acquired pursuant to this section, ~~where such even though the~~ lots or lands or any portion ~~thereof~~ of the
27 lots or lands ~~are without~~ is outside of the corporate limits of the municipality, ~~to the same extent as though~~
28 ~~they were within such corporate limits."~~

29

30 **Section 20.** Section 7-15-4204, MCA, is amended to read:

1 **"7-15-4204. Interpretation.** ~~It is further found and declared:~~

2 ~~— (1) that the~~ The powers conferred by this part and part 43 and this part are for public uses and
3 purposes for which public money may be expended and the power of eminent domain may be exercised;
4 ~~and as provided in Title 70, chapter 30.~~

5 ~~(2) that the~~ The legislature finds and declares that necessity in the public interest exists for the
6 provisions enacted in ~~this part and part 43 is hereby declared as a matter of legislative determination and~~
7 this part concerning urban renewal."

8

9 **Section 21.** Section 7-15-4258, MCA, is amended to read:

10 **"7-15-4258. Acquisition and administration of real and personal property.** (1) ~~Every~~ A municipality
11 ~~shall have power to~~ may:

12 (a) acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain pursuant to
13 Title 70, chapter 30, or otherwise any real property and ~~such~~ personal property ~~as~~ that may be necessary
14 for the administration of the provisions contained in ~~this part and part 43 and this part~~, together with any
15 improvements ~~thereon~~ on the real property;

16 (b) hold, improve, clear, or prepare for redevelopment ~~any such~~ property acquired pursuant to
17 subsection (1)(a);

18 (c) dispose of ~~any~~ real or personal property;

19 (d) insure or provide for the insurance of ~~any~~ real or personal property or the operations of the
20 municipality against any risks or hazards, including the power to pay premiums on any ~~such~~ insurance; and

21 (e) enter into a development agreement with the owner of real property within an urban renewal
22 area and undertake activities, including the acquisition, removal, or demolition of structures, improvements,
23 or personal property located on the real property, to prepare the property for redevelopment.

24 (2) A development agreement entered into in accordance with subsection (1)(e) must contain
25 provisions obligating the owner to redevelop the real property for a specified use consistent with the urban
26 renewal plan and offering recourse to the municipality if the redevelopment is not completed as determined
27 by the local governing body. The development agreement may not constitute the acquisition of an interest
28 in real property by the municipality within the meaning of 7-15-4262 or 7-15-4263.

29 (3) However, ~~no~~ statutory ~~provision~~ provisions with respect to the acquisition, clearance, or
30 disposition of property by public bodies ~~shall~~ may not restrict a municipality in the exercise of ~~such~~

1 functions with respect to an urban renewal project.

2 (4) A municipality ~~shall~~ may not acquire real property for an urban renewal project or enter into
3 a development agreement, as provided in subsection (1)(e), unless the local governing body has approved
4 the urban renewal project plan in accordance with 7-15-4216(2) and 7-15-4217."

5

6 **Section 22.** Section 7-15-4259, MCA, is amended to read:

7 **"7-15-4259. Exercise of power of eminent domain.** (1) After the adoption by the local governing
8 body of a resolution declaring that the acquisition of the real property described ~~therein~~ in the resolution
9 is necessary for an urban renewal project under this part, a municipality ~~shall have the right to~~ may acquire
10 by condemnation, as provided in Title 70, chapter 30, any interest in real property ~~which that it may deem~~
11 considers necessary for ~~such purpose~~ urban renewal.

12 (2) Condemnation for urban renewal of blighted areas is ~~declared to be~~ a public use, and property
13 already devoted to any other public use or acquired by the owner or ~~his~~ the owner's predecessor in interest
14 by eminent domain may be condemned for the purposes of this part.

15 (3) The award of compensation for real property taken for ~~such a~~ an urban renewal project ~~shall~~
16 may not be increased by reason of any increase in the value of the real property caused by the assembly,
17 clearance, or reconstruction or proposed assembly, clearance, or reconstruction in the project area. ~~No An~~
18 allowance ~~shall~~ may not be made for the improvements begun on real property after notice to the owner
19 of ~~such the~~ property of the institution of proceedings to condemn ~~such the~~ property. Evidence ~~shall be~~ is
20 admissible bearing upon the unsanitary, unsafe, or substandard condition of the premises or the unlawful
21 use ~~thereof~~ of the premises."

22

23 **Section 23.** Section 7-15-4460, MCA, is amended to read:

24 **"7-15-4460. Powers of housing authority relating to acquisition and disposition of property.** (1)
25 An authority ~~shall have power to~~ may:

26 (a) purchase, lease, obtain options upon, or acquire by gift, grant, bequest, devise, or otherwise
27 any real or personal property or any interest ~~therein~~ in property from any person, firm, corporation, city,
28 municipality, or government;

29 (b) acquire by eminent domain, as provided in Title 70, chapter 30, any real property, including
30 improvements and fixtures ~~thereon~~ on the real property;

1 (c) sell, exchange, transfer, assign, or pledge any real or personal property or any interest ~~therein~~
 2 in property to any person, firm, corporation, municipality, city, or government;

3 (d) own, hold, clear, and improve property;

4 (e) insure or provide for the insurance of the property or operations of the authority against ~~such~~
 5 risks ~~as that~~ the authority ~~may deem~~ considers advisable;

6 (f) procure insurance or guarantees from the federal government of the payment of any debts or
 7 parts ~~thereof~~ of debt secured by mortgages made or held by the authority on any property included in ~~any~~
 8 a housing project.

9 (2) ~~No provisions~~ Statutes with respect to the acquisition, operation, or disposition of property
 10 by other public bodies ~~shall be~~ are not applicable to an authority unless the legislature ~~shall~~ specifically ~~so~~
 11 state declares that the provisions are applicable."

12

13 **Section 24.** Section 7-15-4462, MCA, is amended to read:

14 **"7-15-4462. Exercise of power of eminent domain.** (1) After the adoption by ~~it~~ the authority of
 15 a resolution declaring that the acquisition of the property described ~~therein~~ in the resolution is in the public
 16 interest and necessary for public use, the authority ~~shall have the right to~~ may acquire by eminent domain
 17 any real property, including fixtures and improvements, ~~which that~~ it may deem considers necessary to
 18 carry out the purposes of ~~this part and~~ part 45 and this part.

19 (2) The authority ~~may~~ shall exercise the power of eminent domain pursuant to the provisions of
 20 ~~either:~~

21 ~~—(a) Title 70, chapter 30; or~~

22 ~~—(b) Any other applicable statutory provisions for the exercise of the power of eminent domain.~~

23 (3) Property already devoted to a public use may be acquired, provided that:

24 (a) ~~no~~ property belonging to any city or municipality within the boundaries of the authority or
 25 belonging to any government may not be acquired without ~~its~~ the government's consent; and

26 (b) ~~that no~~ property belonging to a public utility corporation may not be acquired without the
 27 approval of the commission or other officer or tribunal, ~~if there be any,~~ having regulatory power over ~~such~~
 28 the corporation if the utility is subject to regulatory power."

29

30 **Section 25.** Section 7-16-2105, MCA, is amended to read:

1 **"7-16-2105. Acquisition of land by county for public recreational or cultural purposes.** (1) ~~The~~
 2 ~~counties of this state are authorized to~~ A county may acquire, by purchase, grant, deed, gift, devise,
 3 condemnation pursuant to Title 70, chapter 30, or otherwise, lands suitable for public camping, public
 4 recreational purposes, civic centers, youth centers, museums, recreational centers, and any combination
 5 ~~thereof of the enumerated uses.~~ or A county may lease the land tracts, each of which must be situated
 6 ~~as to offer~~ so that it offers ready access to a public highway.

7 (2) This section may not be construed as amending or repealing 7-16-2201 through 7-16-2203."
 8

9 **Section 26.** Section 7-16-4106, MCA, is amended to read:

10 **"7-16-4106. Acquisition of property for athletic fields and civic stadiums.** (1) ~~Every~~ A city or town
 11 council ~~shall have power to~~ may:

12 (a) acquire by gift, purchase, or condemnation pursuant to Title 70, chapter 30, lands for athletic
 13 fields and civic stadiums within or ~~without~~ outside of the corporate limits of the municipality;

14 (b) establish and regulate ~~such~~ athletic fields and civic stadiums;

15 (c) exercise municipal jurisdiction over the ~~lands so~~ acquired land where such lands when the land
 16 ~~or any portion thereof are without~~ of the land is outside of the corporate limits of the municipality to the
 17 same extent as though ~~they were~~ the land was within ~~said~~ the corporate limits; and

18 (d) construct, maintain, and regulate athletic and civic stadiums ~~thereon~~ on the land.

19 (2) The city or town ~~councils are authorized to~~ council may set aside or designate portions or
 20 tracts of land now owned by any municipality for the purpose of providing athletic fields and civic
 21 stadiums."
 22

23 **Section 27.** Section 7-35-2201, MCA, is amended to read:

24 **"7-35-2201. Power of county commissioners to conduct cemeteries.** ~~The~~ A board of county
 25 commissioners ~~of any county within Montana is hereby given jurisdiction and power to~~ may:

26 (1) establish and conduct cemeteries;

27 (2) acquire by purchase, gift, devise, or condemnation pursuant to Title 70, chapter 30:

28 (a) lands for said purpose by purchase, condemnation, gift, or devise cemetery purposes; and

29 ~~(3)(b)~~ acquire by purchase, condemnation, gift, or devise cemeteries already established and
 30 conducted by persons, firms, or corporations, including municipal corporations."

1

2 **Section 28.** Section 15-70-301, MCA, is amended to read:

3 **"15-70-301. (Temporary) Definitions.** As used in this part, the following definitions apply:

4 (1) "Agricultural use" means use of special fuel by a person who earns income while engaging in
5 the business of farming or ranching and who files farm income reports for tax purposes as required by the
6 United States internal revenue service.

7 (2) "Bond" means:

8 (a) a bond executed by a special fuel user as principal with a corporate surety qualified under the
9 laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all
10 requirements of this part, including the payment of all taxes, penalties, and other obligations of the special
11 fuel user arising out of this part; or

12 (b) a deposit with the department by the special fuel user, under terms and conditions that the
13 department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and
14 insured by the federal deposit insurance corporation.

15 (3) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The
16 term does not mean special fuel delivered into the supply tank of a motor vehicle.

17 (4) "Cardrol" or "keylock" means a unique device intended to allow access to a special fuel
18 dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized
19 user of the unique device.

20 (5) "Department" means the department of transportation.

21 (6) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a
22 storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the
23 transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of
24 the following:

25 (i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage
26 tanks in this state;

27 (ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at
28 the refinery or terminal; or

29 (iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

30 (b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be

1 distributed only by a person who is the holder of a valid distributor's license.

2 (c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery
3 or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.

4 (7) "Distributor" means:

5 (a) a person who engages in the business in this state of producing, refining, manufacturing, or
6 compounding special fuel for sale, use, or distribution;

7 (b) an importer who imports special fuel for sale, use, or distribution;

8 (c) a person who engages in the wholesale distribution of special fuel in this state and chooses
9 to become licensed to assume the Montana state special fuel tax liability; and

10 (d) an exporter.

11 (8) "Export" means to transport out of Montana, by any means other than in the fuel supply tank
12 of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

13 (9) "Exporter" means a person who transports, other than in the fuel supply tank of a motor
14 vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside
15 Montana for sale, use, or consumption outside Montana.

16 (10) "Import" means to first receive special fuel into possession or custody after its arrival and
17 coming to rest at a destination within the state or to first receive any special fuel shipped or transported
18 into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.

19 (11) "Importer" means a person who transports or arranges for the transportation of special fuel
20 into Montana for sale, use, or distribution.

21 (12) "Improperly imported fuel" means special fuel ~~as defined in subsection (16)~~ that is:

22 (a) consigned to a Montana destination and imported into the state without the distributor first
23 having obtained a Montana special fuel distributor license as required in 15-70-341; or

24 (b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title
25 15, chapter 70.

26 (13) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of
27 this state and that are operated in whole or in part by the combustion of special fuel.

28 (14) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership,
29 or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment,
30 or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members

1 and, as applied to joint-stock companies and corporations, the officers.

2 (15) "Public roads and highways of this state" means all streets, roads, highways, and related
3 structures:

4 (a) built and maintained with appropriated funds of the United States, the state of Montana, or
5 any political subdivision of the state;

6 (b) dedicated to public use;

7 (c) acquired by eminent domain, as provided in Title 60, chapter 4, or Title 70, chapter 30; or

8 (d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or
9 any political subdivision of the state.

10 (16) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel
11 or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test,
12 except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads
13 and highways within the state of Montana. The term special fuel includes all other types of additives when
14 the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

15 (17) "Special fuel dealer" means:

16 (a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel
17 supply tank or tanks of a motor vehicle not then owned or controlled by the person;

18 (b) a person who sells special fuel at a location unattended by the dealer through an unattended
19 pump by use of a cardrol, keylock, or similar device; or

20 (c) a person who provides a facility, with or without attended services, from which more than one
21 special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled
22 by the dealer.

23 (18) (a) "Special fuel user" means a person ~~other than the U.S. government, a state, or a county,~~
24 ~~incorporated city or town, or school district of this state~~ who consumes in this state special fuel for the
25 operation of motor vehicles owned or controlled by the person upon the highways of this state.

26 (b) The term does not include the U.S. government, a state, a county, an incorporated city or
27 town, or a school district of this state.

28 (19) "Use", when the term relates to a special fuel user, means the consumption by a special fuel
29 user of special fuels in the operation of a motor vehicle on the highways of this state. (Terminates June
30 30, 2001--sec. 7, Ch. 461, L. 1999.)

1 **15-70-301. (Effective July 1, 2001) Definitions.** As used in this part, the following definitions
2 apply:

3 (1) "Agricultural use" means use of special fuel by a person whose major endeavor is the business
4 of farming or ranching and whose primary source of earned income is from the business of farming or
5 ranching.

6 (2) "Bond" means:

7 (a) a bond executed by a special fuel user as principal with a corporate surety qualified under the
8 laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all
9 requirements of this part, including the payment of all taxes, penalties, and other obligations of the special
10 fuel user arising out of this part; or

11 (b) a deposit with the department by the special fuel user, under terms and conditions that the
12 department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and
13 insured by the federal deposit insurance corporation.

14 (3) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The
15 term does not mean special fuel delivered into the supply tank of a motor vehicle.

16 (4) "Cardtrol" or "keylock" means a unique device intended to allow access to a special fuel
17 dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized
18 user of the unique device.

19 (5) "Department" means the department of transportation.

20 (6) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a
21 storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the
22 transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of
23 the following:

24 (i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage
25 tanks in this state;

26 (ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at
27 the refinery or terminal; or

28 (iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

29 (b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be
30 distributed only by a person who is the holder of a valid distributor's license.

1 (c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery
2 or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.

3 (7) "Distributor" means:

4 (a) a person who engages in the business in this state of producing, refining, manufacturing, or
5 compounding special fuel for sale, use, or distribution;

6 (b) an importer who imports special fuel for sale, use, or distribution;

7 (c) a person who engages in the wholesale distribution of special fuel in this state and chooses
8 to become licensed to assume the Montana state special fuel tax liability; and

9 (d) an exporter.

10 (8) "Export" means to transport out of Montana, by any means other than in the fuel supply tank
11 of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

12 (9) "Exporter" means a person who transports, other than in the fuel supply tank of a motor
13 vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside
14 Montana for sale, use, or consumption outside Montana.

15 (10) "Import" means to first receive special fuel into possession or custody after its arrival and
16 coming to rest at a destination within the state or to first receive any special fuel shipped or transported
17 into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.

18 (11) "Importer" means a person who transports or arranges for the transportation of special fuel
19 into Montana for sale, use, or distribution.

20 (12) "Improperly imported fuel" means special fuel ~~as defined in subsection (16)~~ that is:

21 (a) consigned to a Montana destination and imported into the state without the distributor first
22 having obtained a Montana special fuel distributor license as required in 15-70-341; or

23 (b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title
24 15, chapter 70.

25 (13) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of
26 this state and that are operated in whole or in part by the combustion of special fuel.

27 (14) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership,
28 or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment,
29 or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members
30 and, as applied to joint-stock companies and corporations, the officers.

1 (15) "Public roads and highways of this state" means all streets, roads, highways, and related
2 structures:

3 (a) built and maintained with appropriated funds of the United States, the state of Montana, or
4 any political subdivision of the state;

5 (b) dedicated to public use;

6 (c) acquired by eminent domain, as provided in Title 60, chapter 4, or Title 70, chapter 30; or

7 (d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or
8 any political subdivision of the state.

9 (16) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel
10 or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test,
11 except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads
12 and highways within the state of Montana. The term special fuel includes all other types of additives when
13 the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

14 (17) "Special fuel dealer" means:

15 (a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel
16 supply tank or tanks of a motor vehicle not then owned or controlled by the person;

17 (b) a person who sells special fuel at a location unattended by the dealer through an unattended
18 pump by use of a cardrol, keylock, or similar device; or

19 (c) a person who provides a facility, with or without attended services, from which more than one
20 special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled
21 by the dealer.

22 (18) (a) "Special fuel user" means a person ~~other than the U.S. government, a state, or a county,~~
23 ~~incorporated city or town, or school district of this state~~ who consumes in this state special fuel for the
24 operation of motor vehicles owned or controlled by the person upon the highways of this state.

25 (b) The term does not include the U.S. government, a state, a county, an incorporated city or
26 town, or a school district of this state.

27 (19) "Use", when the term relates to a special fuel user, means the consumption by a special fuel
28 user of special fuels in the operation of a motor vehicle on the highways of this state."

29

30 **Section 29.** Section 15-70-701, MCA, is amended to read:

1 **"15-70-701. Definitions.** As used in this part, the following definitions apply:

2 (1) "Bond" means:

3 (a) a bond executed by a compressed natural gas dealer or a liquefied petroleum gas dealer as
4 principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana,
5 conditioned upon performance of all requirements of this part, including the payment of all taxes, penalties,
6 and other obligations of the compressed natural gas dealer or the liquefied petroleum gas dealer arising out
7 of this part; or

8 (b) a deposit with the department by the compressed natural gas dealer or the liquefied petroleum
9 gas dealer, under terms and conditions that the department may prescribe, of certificates of deposit or
10 irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

11 (2) "Compressed natural gas" means a product that is used as a fuel and that contains carbon or
12 hydrogen, or both, and is compressed to greater than 24 pounds per square inch absolute base pressure
13 and up to 3,600 pounds per square inch absolute base pressure when sold for use in motor vehicles
14 operated on the public roads and highways of this state.

15 (3) "Compressed natural gas dealer" or "dealer" means a person who delivers any part of
16 compressed natural gas into the fuel supply tank or tanks of a motor vehicle.

17 (4) "Department" means the department of transportation.

18 (5) "Liquefied petroleum gas" means any petroleum product that is sold for use in motor vehicles
19 and that is composed predominantly of any of the following hydrocarbons or mixtures of hydrocarbons:

20 (a) propane;

21 (b) propylene;

22 (c) butane, including normal butane or isobutane; or

23 (d) butylene.

24 (6) "Liquefied petroleum gas dealer" or "dealer" means a person who delivers any part of liquefied
25 petroleum gas into the fuel supply tank or tanks of a motor vehicle.

26 (7) "Motor vehicle" means any vehicle that is self-propelled by compressed natural gas or by
27 liquefied petroleum gas and that is driven upon the public roads and highways of this state.

28 (8) (a) "Person" means a person, firm, association, joint-stock company, syndicate, partnership,
29 or corporation.

30 (b) When used in any clause prescribing and imposing a fine or imprisonment, or both, as applied

1 to a firm, association, syndicate, or partnership, person means the partners or members of a firm,
 2 association, syndicate, or partnership; ~~as.~~ As applied to a joint-stock company or corporation, the term
 3 means the officers of the joint-stock company or corporation.

4 (9) "Public roads and highways of this state" means all streets, roads, highways, and related
 5 structures that are:

6 (a) built and maintained with appropriated funds of the United States, the state of Montana, or
 7 any political subdivision of the state;

8 (b) dedicated to public use;

9 (c) acquired by eminent domain, as provided in Title 60, chapter 4, or Title 70, chapter 30; or

10 (d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or
 11 any political subdivision of the state."

12

13 **Section 30.** Section 23-1-102, MCA, is amended to read:

14 **"23-1-102. Powers and duties of department of fish, wildlife, and parks.** (1) The department shall
 15 make a study to determine the scenic, historic, archaeological, scientific, and recreational resources of the
 16 state. ~~and~~ The department may by purchase, lease, agreement, or acceptance of donations, ~~or~~
 17 ~~condemnation for the purposes outlined in 87-1-209(2)~~ acquire for the state any areas, sites, or objects
 18 ~~which~~ that in its opinion should be held, improved, and maintained as state parks, state recreational areas,
 19 state monuments, or state historical sites. The department, with the consent of the commission, may
 20 acquire by condemnation, pursuant to Title 70, chapter 30, lands or structures for the purposes provided
 21 in 87-1-209(2).

22 (2) The department may ~~in its discretion~~ accept in the name of the state, in fee or otherwise, any
 23 areas, sites, or objects conveyed, entrusted, donated, or devised to the state. It may ~~in its discretion~~
 24 accept gifts, grants, bequests, or contributions of money or other property to be spent or used for any of
 25 the purposes of this part.

26 (3) A contract, for any of the purposes of this part, may not be entered into or ~~other~~ another
 27 obligation incurred until ~~moneys have~~ money has been appropriated by the legislature or ~~are~~ is otherwise
 28 available, ~~and, if~~ If the contract or obligation pertains to acquisition of areas or sites in excess of either 100
 29 acres or \$100,000 in value, ~~until~~ the board of land commissioners ~~has~~ shall specifically ~~approved~~ such
 30 approve the acquisition.

1 (4) The department ~~also~~ has jurisdiction, custody, and control of all state parks, recreational areas,
 2 public camping grounds, historical sites, and monuments, except wayside camps and other public
 3 conveniences acquired, improved, and maintained by the department of transportation and contiguous to
 4 the state highway system. The department may designate lands under its control as state parks, state
 5 historical sites, state monuments, or by any other designation that it considers appropriate. The
 6 department may remove or change the designation of any area or portion of an area, and may name or
 7 change the name of any area ~~as designated~~. The department may lease those portions of designated lands
 8 ~~which~~ that are necessary for the proper administration of ~~these~~ the lands in keeping with the basic purpose
 9 of this part."

10

11 **Section 31.** Section 35-18-106, MCA, is amended to read:

12 **"35-18-106. Powers of cooperatives.** (1) A cooperative ~~has power to~~ may:

13 ~~(1)~~(a) sue and be sued in its corporate name;

14 ~~(2)~~(b) have perpetual existence;

15 ~~(3)~~(c) adopt a corporate seal and alter the ~~same at pleasure~~ seal;

16 ~~(4)~~(d) become a member in one or more other cooperatives or corporations or ~~to~~ own stock in
 17 other cooperatives or corporations;

18 ~~(5)~~(e) construct, purchase, take, receive, lease as lessee, or otherwise acquire and ~~to~~ own, hold,
 19 use, equip, maintain, and operate and sell, assign, transfer, convey, exchange, lease as lessor, mortgage,
 20 pledge, or otherwise dispose of or encumber;

21 (i) electric transmission and distribution lines or systems;

22 (ii) electric generating plants;

23 (iii) electric refrigeration plants;

24 (iv) telephone lines, facilities, or systems (but not telegraph or radio broadcasting services or
 25 facilities) as defined by law;

26 (v) lands, buildings, structures, dams, plants and equipment, and all kinds or classes of real or
 27 personal property, ~~which~~ that may be considered necessary, convenient, or appropriate to accomplish the
 28 purpose for which the cooperative is organized;

29 ~~(6)~~(f) purchase or otherwise acquire and own, hold, use, and exercise and sell, assign, transfer,
 30 convey, mortgage, pledge, hypothecate, or otherwise dispose of or encumber franchises, rights, privileges,

1 licenses, rights-of-way, and easements;

2 ~~(7)(g)~~ borrow money and otherwise contract indebtedness and issue notes, bonds, and other
3 evidences of indebtedness and secure the payment of indebtedness by mortgage, pledge, deed of trust,
4 or any other encumbrance upon all of its ~~then-owned~~ then-owned or after-acquired real or personal
5 property, assets, franchises, ~~revenues~~ revenue, or income;

6 ~~(8)(h)~~ subject to the requirements on the use of public thoroughfares and land that are imposed
7 by the appropriate authority having jurisdiction over corporations constructing or operating electric
8 transmission and distribution lines or systems or telephone lines, facilities, or systems, construct, maintain,
9 and operate electric transmission and distribution lines or telephone, cable television, or broadband lines,
10 facilities, or systems;

11 (i) along, upon, under, and across all public thoroughfares, including without limitation all roads,
12 highways, streets, alleys, bridges, and causeways; and

13 (ii) upon, under, and across all publicly owned lands, ~~subject, however, to the same requirements~~
14 ~~in respect of the use of the thoroughfares and lands as are imposed by the respective authorities having~~
15 ~~jurisdiction of them upon corporations constructing or operating electric transmission and distribution lines~~
16 ~~or systems or telephone lines, facilities, or systems;~~

17 ~~(9)(i)~~ exercise the power of eminent domain in the manner provided ~~by the laws of this state in~~
18 Title 70, chapter 30, for the exercise of that power by corporations constructing or operating electric
19 transmission and distribution lines or systems or telephone lines, facilities, or systems;

20 ~~(10)(j)~~ conduct its business and exercise all of its powers within or ~~without~~ outside of this state;

21 ~~(11)(k)~~ adopt, amend, and repeal bylaws; and

22 ~~(12) in the case of corporations organized under the provisions of 35-18-105(1):~~

23 ~~—— (a) generate, manufacture, purchase, acquire, accumulate, and transmit electric energy and~~
24 ~~distribute, sell, supply, and dispose of electric energy in rural areas to its members, to governmental~~
25 ~~agencies and political subdivisions, and to other persons not in excess of 10% of the number of its~~
26 ~~members;~~

27 ~~—— (b) make loans to persons to whom electric energy is or will be supplied by the cooperative for~~
28 ~~the purpose of and otherwise to assist those persons in wiring their premises and installing in their~~
29 ~~premises electrical and plumbing fixtures, appliances, apparatus, and equipment of all kinds and character~~
30 ~~and, in connection with electrical and plumbing fixtures, purchase, acquire, lease, sell, distribute, install,~~

1 ~~and repair the electrical and plumbing fixtures, appliances, apparatus, and equipment and accept or~~
 2 ~~otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes,~~
 3 ~~bonds, and other evidences of indebtedness and all types of security for electrical and plumbing fixtures;~~
 4 ~~———(c) make loans to persons to whom electric energy is or will be supplied by the cooperatives for~~
 5 ~~the purpose of and otherwise to assist those persons in constructing, maintaining, and operating electric~~
 6 ~~refrigeration plants;~~

7 ~~———(13) in the case of corporations organized under the provisions of 35-18-105(2):~~

8 ~~———(a) improve and expand existing telephone lines, facilities, and systems and construct, acquire,~~
 9 ~~operate, and furnish additional telephone lines, facilities, and systems as that are required to assure the~~
 10 ~~availability of adequate telephone service to the widest practicable number of users of telephone service;~~

11 ~~———(b) make loans to persons to whom telephone service is or will be supplied by the cooperative for~~
 12 ~~the purpose of and otherwise to assist those persons in wiring their premises for telephone service and~~
 13 ~~installing in their premises telephone fixtures, appliances, apparatus, and equipment of all kinds and~~
 14 ~~character and, in connection with telephone fixtures, purchase, acquire, lease, sell, distribute, install, and~~
 15 ~~repair the telephone fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and~~
 16 ~~sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other~~
 17 ~~evidences of indebtedness and all types of security for telephone fixtures;~~

18 ~~(14)(l) do and perform all other acts and things and have and exercise all other powers that may~~
 19 ~~be necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized~~
 20 ~~or authorized under federal law.~~

21 (2) In addition to the powers listed in subsection (1), corporations organized under the provisions
 22 of 35-18-105(1) may:

23 (a) generate, manufacture, purchase, acquire, accumulate, and transmit electrical energy;

24 (b) distribute, sell, supply, and dispose of electrical energy in rural areas to:

25 (i) its members;

26 (ii) governmental agencies and political subdivisions; and

27 (iii) other persons not in excess of 10% of the number of its members;

28 (c) make loans to persons to whom electrical energy is or will be supplied by the cooperative to
 29 assist those persons in wiring their premises and installing in their premises electrical and plumbing
 30 fixtures, appliances, apparatus, and equipment of all kinds and character;

1 (d) in connection with electrical and plumbing fixtures, purchase, acquire, lease, sell, distribute,
 2 install, and repair the electrical and plumbing fixtures, appliances, apparatus, and equipment and accept
 3 or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of
 4 notes, bonds, and other evidences of indebtedness and all types of security for electrical and plumbing
 5 fixtures; and

6 (e) make loans to persons to whom electrical energy is or will be supplied by the cooperatives for
 7 the purpose of and otherwise to assist those persons in constructing, maintaining, and operating electric
 8 refrigeration plants.

9 (3) In addition to the powers listed in subsection (1), corporations organized under the provisions
 10 of 35-18-105(2) may:

11 (a) improve and expand existing telephone lines, facilities, and systems;

12 (b) construct, acquire, operate, and furnish additional telephone lines, facilities, and systems that
 13 are required to ensure the availability of adequate telephone service to the widest practicable number of
 14 users of telephone service;

15 (c) make loans to persons to whom telephone service is or will be supplied by the cooperative to
 16 assist those persons in wiring their premises for telephone service and installing in their premises telephone
 17 fixtures, appliances, apparatus, and equipment of all kinds and character;

18 (d) in connection with telephone fixtures, purchase, acquire, lease, sell, distribute, install, and
 19 repair the telephone fixtures, appliances, apparatus, and equipment; and

20 (e) accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and
 21 otherwise dispose of notes, bonds, and other evidences of indebtedness and all types of security for
 22 telephone fixtures."

23

24 **Section 32.** Section 35-20-104, MCA, is amended to read:

25 **"35-20-104. Effect of filing -- powers of association -- eminent domain.** ~~Whenever such~~ When a
 26 certificate of incorporation is duly acknowledged, and recorded, and filed as provided in the last section
 27 35-20-103, the association mentioned therein shall be deemed is considered legally incorporated and shall
 28 ~~have~~ has the general powers and privileges of corporations with the right to sue and be sued and to
 29 continue perpetually, ~~and in addition thereto such corporations shall have the right and power to~~ The
 30 association may also take private property for public use to be used exclusively for a cemetery or place

1 of burial of the dead. ~~Such~~ The power of eminent domain ~~to~~ must be exercised under the provisions of
2 Title 70, chapter 30."

3

4 **Section 33.** Section 53-2-201, MCA, is amended to read:

5 **"53-2-201. Powers and duties of department.** (1) The department shall:

6 (a) administer and supervise public assistance, including the provision of food stamps, food
7 commodities, FAIM financial assistance, as defined in 53-2-902, energy assistance, weatherization,
8 vocational rehabilitation, services for persons with severe disabilities, developmental disability services,
9 medical care payments in behalf of recipients of public assistance, employment and training services for
10 recipients of public assistance, and other programs as necessary to strengthen and preserve families;

11 (b) give consultant service to private institutions providing care for adults who are needy, indigent,
12 or dependent or who have disabilities;

13 (c) cooperate with other state agencies and develop provisions for services to the blind, including
14 the prevention of blindness, the location of blind persons, medical services for eye conditions, and
15 vocational guidance and training of the blind;

16 (d) provide services in respect to organization and supervise county departments of public welfare
17 and county boards of public welfare in the administration of public assistance functions and for efficiency
18 and economy;

19 (e) assist and cooperate with other state and federal departments, bureaus, agencies, and
20 institutions, when requested, by performing services in conformity with public assistance purposes;

21 (f) administer all state and federal funds allocated to the department for public assistance and do
22 all things necessary, in conformity with federal and state law, for the proper fulfillment of public assistance
23 purposes;

24 (g) make rules governing payment for services and supplies provided to recipients of public
25 assistance; and

26 (h) adopt rules regarding assignment of monetary and medical support upon application for FAIM
27 financial assistance, as defined in 53-2-902, and related medical assistance.

28 (2) The department may:

29 (a) purchase, exchange, condemn, as provided in Title 70, chapter 30, or receive by gift either
30 real or personal property that is necessary to carry out its public assistance functions. Title to property

1 obtained under this subsection must be taken in the name of the state of Montana for the use and benefit
2 of the department.

3 (b) contract with the federal government to carry out its public assistance functions. The
4 department may do all things necessary in order to avail itself of federal aid and assistance.

5 (c) make rules, consistent with state and federal law, establishing the amount, scope, and duration
6 of services to be provided to recipients of public assistance."

7

8 **Section 34.** Section 60-1-103, MCA, is amended to read:

9 **"60-1-103. General definitions.** Subject to additional definitions contained in this title that are
10 applicable to specific chapters or sections and unless the context otherwise requires, the following
11 definitions apply:

12 (1) "Abandonment" means cessation of use of right-of-way or an easement or cessation of activity
13 on the right-of-way or easement with no intention to reclaim or use again. Abandonment is sometimes
14 called vacation.

15 (2) "Bridge" means any bridge constructed by the department, together with all appurtenances,
16 additions, alterations, improvements, and replacements and the approaches to the bridge, lands used in
17 connection with the bridge, and improvements incidental or integral to the bridge.

18 (3) "Commission" means the transportation commission provided for in 2-15-2502.

19 (4) "Condemnation" means taking by exercise of the right of eminent domain, as provided in Title
20 70, chapter 30, and chapter 4 of this title.

21 (5) "Construction" means supervising, inspecting, actual building, and all expenses incidental to
22 the construction or reconstruction of a highway, including locating, surveying, mapping, and costs of
23 right-of-way or other interests in land and elimination of hazards at railway grade crossings.

24 (6) "Control of access" means the condition in which the right of owners or occupants of abutting
25 land or other persons to access, light, air, or view in connection with a highway is fully or partially
26 controlled by public authority.

27 (7) "County road" means any public highway opened, established, constructed, maintained,
28 abandoned, or discontinued by a county in accordance with Title 7, chapter 14.

29 (8) "Department" means the department of transportation provided for in Title 2, chapter 15, part
30 25.

1 (9) "Director" means the director of transportation, a position provided for in 2-15-2501.

2 (10) "Easement" means a right acquired by public authority to use or control property for a
3 designated purpose.

4 (11) "Eminent domain" means the right of the state to take private property for public use.

5 (12) "Federal-aid highway" means a public highway that is a portion of any of the federal-aid
6 highway systems.

7 (13) "Federal-aid highway systems" means all of the systems named as part of the systems and
8 their urban extensions.

9 (14) "Federal-aid interstate system" means that system of public highways selected by the
10 commission in cooperation with adjoining states, subject to the approval of the secretary of commerce,
11 as provided in Title 23, U.S.C.

12 (15) "Federal-aid primary system" means that system of connected public highways designated
13 by the commission, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

14 (16) "Federal-aid secondary system" means that system of public highways not in the federal-aid
15 primary or interstate systems selected by the commission in cooperation with the boards of county
16 commissioners, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

17 (17) "Fee simple" means an absolute estate or ownership in property, including unlimited power
18 of alienation.

19 (18) "Highway" includes rights-of-way or other interests in land, embankments, retaining walls,
20 culverts, sluices, drainage structures, bridges, railroad-highway crossings, tunnels, signs, guardrails, and
21 protective structures.

22 (19) "Highway", "road", and "street", whether the terms appear together or separately or are
23 preceded by the adjective "public", are general terms denoting a public way for purposes of vehicular
24 travel and include the entire area within the right-of-way.

25 (20) "Highway authority" means the entity at any level of government authorized by law to
26 construct and maintain highways.

27 (21) "Maintenance" means the preservation of the entire highway, including surface, shoulders,
28 roadsides, structures, and traffic-control devices that are necessary for the safe and efficient use of the
29 highway.

30 (22) "Public highways" means all streets, roads, highways, bridges, and related structures:

1 (a) built and maintained with appropriated funds of the United States or the state or any political
2 subdivision of the state;

3 (b) dedicated to public use;

4 (c) acquired by eminent domain, as provided in Title 70, chapter 30, and chapter 4 of this title;

5 or

6 (d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or
7 any political subdivision of the state.

8 (23) "Right-of-way" is a general term denoting land, property, or any interest in land or property,
9 usually in a strip, acquired for or devoted to highway purposes.

10 (24) "Scenic-historic byway" means a public road or segment of a public road that has been
11 designated as a scenic-historic byway by the commission, as provided in 60-2-601.

12 (25) "State highway" means any public highway planned, laid out, altered, constructed,
13 reconstructed, improved, repaired, maintained, or abandoned by the department."

14

15 **Section 35.** Section 60-5-104, MCA, is amended to read:

16 **"60-5-104. Powers of highway authorities.** (1) Those authorities of the state, counties, and
17 municipalities authorized to participate in construction and maintenance of highways may plan, designate,
18 establish, regulate, vacate, alter, improve, maintain, and provide controlled-access facilities for public use.
19 Each ~~such~~ authority shall by resolution make the findings and determinations provided for in 60-5-103 in
20 order to designate a highway as a controlled-access facility.

21 (2) The highway authorities of the state, counties, incorporated cities, and towns, respectively;
22 or in cooperation each with the other, may acquire private or public property and property rights for
23 controlled-access highways or controlled-access facilities and service roads. ~~Such~~ The property rights may
24 include rights of access, air, view, and light. ~~They~~ The property and property rights may be acquired by
25 gift, devise, purchase, or condemnation, ~~in the same manner as may now or hereafter be authorized by~~
26 law as provided in Title 70, chapter 30, and chapter 4 of this title, for the acquisition of property or
27 property rights in connection with highways, roads, and streets in their respective jurisdictions.

28 (3) Within incorporated cities and towns and upon county roads or secondary highways, the
29 department of transportation ~~shall~~ may not control access without the consent of the appropriate
30 governing body.

1 (4) Each authority may also exercise with relation to controlled-access facilities any ~~and all~~
 2 ~~additional current or future~~ authority ~~now or hereafter vested in it~~ has over highways, roads, or streets
 3 within its ~~respective~~ jurisdiction. ~~# Each authority may, within its jurisdiction,~~ regulate, restrict, or prohibit
 4 the use of controlled-access facilities by any vehicles or traffic."

5

6 **Section 36.** Section 67-2-301, MCA, is amended to read:

7 **"67-2-301. State airports -- acquisition.** (1) The department may, on behalf of and in the name
 8 of this state:

9 (a) acquire real or personal property by purchase, gift, devise, lease, condemnation proceedings
 10 pursuant to Title 70, chapter 30, or otherwise for the purpose of establishing and constructing airports,
 11 restricted landing areas, and other air navigation facilities;

12 (b) acquire in like manner, own, control, establish, construct, enlarge, improve, maintain, equip,
 13 operate, regulate, and police airports, restricted landing areas, and other air navigation facilities either
 14 within or outside of this state;

15 (c) prior to acquisition, make investigations, surveys, and plans;

16 (d) erect, install, construct, and maintain facilities at those airports for the servicing of aircraft and
 17 for the comfort and accommodation of air travelers; and

18 (e) dispose of any property, airport, restricted landing area, or ~~any~~ other air navigation facility by
 19 sale, lease, or otherwise in accordance with the laws of this state governing the disposition of other ~~like~~
 20 similar property of the state.

21 (2) The department may not, ~~however,~~ acquire or take over an airport, restricted landing area, or
 22 other air navigation facility owned or controlled by a municipality of this state without the consent of the
 23 municipality. The department may erect, equip, operate, and maintain ~~on~~ at an airport; all buildings and
 24 equipment necessary and proper to establish, maintain, and conduct the airport and air navigation facilities
 25 connected with ~~#~~ the airport.

26 (3) ~~Where~~ When necessary, in order to provide unobstructed air space for the landing and taking
 27 off of aircraft utilizing airports and restricted landing areas acquired or operated under the provisions of
 28 this title, the department may acquire, in the manner provided for the acquisition of property for airport
 29 purposes, easements through or other interests in air space over land or water, interests in airport hazards
 30 outside the boundaries of the airports or restricted landing areas, and ~~such~~ other airport protection

1 privileges ~~as~~ that are necessary to ensure safe approaches to the landing areas of airports and restricted
 2 landing areas and the safe and efficient operation of them. The department may also acquire in the same
 3 manner the right or easement, for a term of years or perpetually, to place or maintain suitable marks for
 4 the daytime marking and suitable lights for the nighttime marking of airport hazards, including the right of
 5 ingress and egress to or from the airport hazards for the purpose of maintaining and repairing the lights
 6 and marks. This authority does not limit the right, power, or authority of the state or a municipality to zone
 7 property adjacent to an airport or restricted landing area pursuant to a law of this state.

8 (4) The department may engage in ~~all those~~ the activities listed in subsections (1) through (3)
 9 jointly with the United States, with other states, and with municipalities or other agencies of this state.

10 (5) For the purpose of acquiring any property ~~which~~ that it is authorized to acquire, the department
 11 may exercise the right of eminent domain, in the name of the state, in the manner provided ~~by the laws~~
 12 ~~of this state for the acquisition of real property for public purposes~~ in Title 70, chapter 30. The acquisition
 13 of property for any of ~~those~~ the purposes listed in this section is a public use."

14

15 **Section 37.** Section 67-5-202, MCA, is amended to read:

16 **"67-5-202. Regulation of existing structures -- power of acquisition.** ~~With respect to any A~~
 17 building or other structure existing on February 7, 1939, ~~which~~ that does not conform to the height
 18 regulations of this chapter ~~in the manner of height,~~ is subject to acquisition by the governmental entity
 19 owning or operating an airport or landing field. In order to protect its own airports and landing fields and
 20 to implement this chapter, the governmental authority ~~affected thereby (whether the United States, the~~
 21 ~~state of Montana, the several counties, or the several municipalities) in its own right and name, to protect~~
 22 ~~its own airports and landing fields and to carry out the purposes and provisions of this chapter,~~ shall have
 23 ~~and is hereby given the right and authority to~~ may acquire by purchase, grant, or condemnation pursuant
 24 to Title 70, chapter 30, such an estate or interest in any ~~such~~ building, ~~or~~ structure, or other object,
 25 whether a natural object or not, ~~and/or~~ and in the lands upon which it is situated ~~as~~ that is necessary to
 26 vest full ~~and absolute ownership and~~ control in perpetuity of the space above ~~such~~ the land. The
 27 acquisition is limited to the extent necessary to correct ~~or abate~~ the height of any ~~such~~ nonconforming
 28 building, ~~or~~ other structure, or object to meet the requirements of this chapter ~~as~~ with respect to height
 29 limitation within the designated zones ~~designated~~."

30

1 **Section 38.** Section 67-6-301, MCA, is amended to read:

2 **"67-6-301. Acquisition of property rights when zoning not sufficient.** The political subdivision
3 within which the property or nonconforming use is located or the political subdivision owning the airport
4 or served by ~~it~~ the airport may acquire, by purchase, grant, or condemnation ~~in the manner provided by~~
5 ~~the law under which political subdivisions are authorized to acquire real property for public purposes~~
6 pursuant to Title 70, chapter 30, such an air right, aviation easement, or other estate or interest in the
7 property or nonconforming structure or use ~~in question as may be~~ that is necessary to effectuate the
8 purposes of this chapter, ~~in any case in which~~ The governmental entity may acquire an interest when:

9 (1) it is ~~desired~~ desirable to remove, lower, or otherwise terminate a nonconforming structure or
10 use;

11 (2) the necessary approach protection ~~necessary~~ cannot, because of constitutional limitations, be
12 provided by airport zoning regulations under this chapter; or

13 (3) it appears advisable that the necessary approach protection be provided by acquisition of
14 property rights rather than by airport zoning regulations."

15

16 **Section 39.** Section 67-10-102, MCA, is amended to read:

17 **"67-10-102. Acquisition and establishment of airports and landing fields.** (1) Counties, cities, and
18 towns ~~in this state~~ may, either individually or by the joint action of a county and one or more of the cities
19 and towns within ~~its border~~ the county, acquire by gift, deed, purchase, or condemnation pursuant to Title
20 70, chapter 30, land for airport or landing field purposes, ~~and thereon~~ The local governments may use the
21 land to establish, construct, own, control, lease, equip, improve, operate, and regulate airports or landing
22 fields for the use of airplanes and other aircraft ~~and may use for such purpose or purposes any property~~
23 ~~suitable therefor that now or may at any time hereafter be acquired, owned, or controlled by such county,~~
24 ~~city, or town.~~

25 (2) In addition, a county, city, or town may ~~do the acts authorized~~ exercise the authority granted
26 by this section by acting jointly with one or more counties, with one or more cities, with one or more
27 towns, or with any combination of ~~such~~ counties, cities, or towns. ~~Such~~ A multijurisdictional airport ~~need~~
28 is not required to be located, in whole or in part, within the limits of each subdivision participating in the
29 joint venture."

30

1 **Section 40.** Section 67-10-103, MCA, is amended to read:

2 **"67-10-103. Public purpose.** (1) ~~Any lands~~ Land acquired, owned, controlled, or occupied by ~~any~~
3 a county, city, or town, individually or pursuant to joint action ~~as herein provided~~ for the purposes
4 enumerated in 67-10-102, ~~are~~ is acquired, owned, controlled, and occupied for a public use and as a
5 matter of public necessity, ~~and such counties~~ Counties, cities, and towns, whether acting individually or
6 jointly, have the right to acquire property for ~~such the enumerated~~ purposes under the power of eminent
7 domain as ~~and for a public use or necessity~~ provided in Title 70, chapter 30.

8 (2) The following are public and governmental functions, exercised for a public purpose and as
9 matters of public necessity:

10 (a) the acquisition of any land or an interest therein in land pursuant to this chapter;

11 (b) the planning, acquisition, establishment, development, construction, improvement,
12 maintenance, equipment, operation, regulation, protection, and policing of airports and air navigation
13 facilities, including the acquisition or elimination of airport hazards; and

14 (c) the exercise of any other powers herein granted in this chapter to municipalities and other
15 public agencies, to be severally or jointly exercised, ~~are public and governmental functions, exercised for~~
16 ~~a public purpose and matters of public necessity and, in the case of any county, are county functions and~~
17 ~~purposes as well as public and governmental and, in the case of any municipality other than a county, are~~
18 ~~municipal functions and purposes as well as public and governmental.~~

19 (3) All land and other property and privileges acquired and used by or on behalf of any municipality
20 or other public agency in the manner and for the purposes enumerated in this chapter are acquired and
21 used for public and governmental purposes and as a matter of public necessity and, in the case of a county
22 or municipality, for county or municipal purposes, respectively."
23

24 **Section 41.** Section 67-10-201, MCA, is amended to read:

25 **"67-10-201. General municipal powers.** (1) ~~Every~~ A municipality may, out of any appropriations
26 or other money made available for ~~such airport~~ purposes, plan, establish, develop, construct, enlarge,
27 improve, maintain, equip, operate, regulate, protect, and police airports and air navigation facilities, either
28 within or ~~without~~ outside of the territorial limits of ~~such the~~ municipality and within or ~~without~~ outside of
29 the territorial boundaries of this state, ~~including~~ The airport purposes include the construction, installation,
30 ~~equipment~~ equipping, maintenance, and operation at ~~such~~ airports of buildings and other facilities for the

1 servicing of aircraft or for the comfort and accommodation of air travelers and the purchase and sale of
 2 supplies, goods, and commodities as an incident to the operation of its airport properties. ~~For such~~
 3 ~~purposes the~~ A municipality may use any available property that it ~~may now or hereafter own or control~~
 4 ~~and may~~, owns or controls for airport purposes. A municipality may acquire real or personal property or
 5 any interest in property by purchase, gift, devise, lease, eminent domain proceedings pursuant to Title 70,
 6 chapter 30, or otherwise, ~~acquire property, real or personal, or any interest therein,~~ A municipality may
 7 also acquire property interests, including easements, in airport hazards or land outside the boundaries of
 8 an airport or airport site, ~~as is~~ that are necessary to:

9 (a) permit safe and efficient operation of the airport;

10 (b) ~~to~~ permit the removal, elimination, obstruction-marking, or obstruction-lighting of airport
 11 hazards; or

12 (c) ~~to~~ prevent the establishment of airport hazards.

13 (2) The municipality may, by purchase, gift, devise, lease, eminent domain proceedings pursuant
 14 to Title 70, chapter 30, or otherwise, acquire existing airports and air navigation facilities, ~~provided~~
 15 ~~however it~~ However, a municipality may not acquire ~~or take over~~ any airport or air navigation facility
 16 owned or controlled by another municipality or public agency of this or any other state without the consent
 17 of ~~such~~ the municipality or public agency.

18 (3) For the purposes of this chapter, a municipality may establish or acquire and maintain, within
 19 or bordering upon the territorial limits of the municipality, airports in, over, and upon any public waters of
 20 this state, any submerged lands under ~~such~~ public waters, and any artificial or reclaimed lands ~~which~~ that
 21 before the artificial making or reclamation ~~thereof~~ constituted a portion of the submerged lands under ~~such~~
 22 the public waters, ~~and~~ A municipality may construct and maintain terminal buildings, landing floats,
 23 causeways, roadways, and bridges for approaches to or connecting with any ~~such~~ airport, ~~and~~ may
 24 construct and maintain landing floats and breakwaters for the protection ~~thereof~~ of the other
 25 improvements.

26 (4) All air navigation facilities established or operated by municipalities ~~shall~~ must be
 27 supplementary to and coordinated in design and operation with ~~these~~ air navigation facilities established
 28 and operated by the federal and state governments.

29 (5) A municipality may enter into any contracts necessary ~~for the execution of the powers granted~~
 30 ~~it and~~ for the purposes provided by this chapter."

1

2 **Section 42.** Section 67-10-205, MCA, is amended to read:

3 **"67-10-205. Joint airport board.** (1) Public agencies acting jointly pursuant to 67-10-204 through
 4 67-10-206 shall create a joint board ~~which shall~~ that must consist of members appointed by the governing
 5 body of each participating public agency. Per diem and mileage of ~~such the~~ joint board may be set by
 6 resolution of the board of county commissioners. The number of members to be appointed and their ~~term~~
 7 ~~shall~~ terms must be provided for in the joint agreement. ~~Each such~~ A joint board shall organize, select
 8 officers for terms to be fixed by the agreement, and from time to time adopt and amend rules for its own
 9 procedure. The joint board ~~shall have power to~~ may plan, acquire, establish, develop, construct, enlarge,
 10 improve, maintain, equip, operate, regulate, protect, and police any airport or air navigation facility or
 11 airport hazard to be jointly acquired, controlled, and operated, ~~and such~~ Subject to subsection (2), the
 12 board may exercise on behalf of its constituent public agencies all the powers of each public agency with
 13 respect to ~~such the~~ airport, air navigation facility, or airport hazard, ~~subject to the limitations of subsection~~
 14 ~~(2) of this section.~~

15 (2) (a) The total expenditures to be made by the joint board for any purpose in any calendar year
 16 ~~shall must~~ be determined by a budget approved by the governing bodies of its constituent public agencies.

17 (b) ~~No~~ An airport, air navigation facility, airport hazard, or real or personal property, the cost of
 18 which is in excess of sums ~~therefor~~ fixed by the joint agreement or allotted in the annual budget, may not
 19 be acquired by the joint board without the approval of the governing bodies of its constituent public
 20 agencies.

21 (c) Eminent domain proceedings authorized under 67-10-204 through 67-10-206 and conducted
 22 as provided in Title 70, chapter 30, may be instituted only by authority of the governing bodies of the
 23 constituent public agencies of the joint board. If ~~so~~ authorized, ~~such~~ eminent domain proceedings ~~shall~~
 24 must be instituted in the names of the constituent public agencies jointly, and the property ~~so~~ acquired
 25 ~~shall must~~ be held by ~~said the~~ public agencies as tenants in common until conveyed by them to the joint
 26 board.

27 (d) The joint board ~~shall may~~ not dispose of any airport, air navigation facility, or real property
 28 under its jurisdiction except with the consent of the governing bodies of its constituent public agencies, ~~;~~
 29 ~~provided that~~ However, the joint board may, without ~~such~~ consent, enter into the contract, lease, or other
 30 arrangements contemplated by 67-10-302.

1 (e) Any resolutions, rules, or orders of the joint board ~~dealing that deal~~ with subjects authorized
 2 by 67-10-301 ~~shall become~~ are effective only upon approval of the governing bodies of the constituent
 3 public agencies; ~~provided that upon such~~ Upon approval, the resolutions, rules, or orders of the joint board
 4 ~~shall~~ have the same force and effect in the territories or jurisdictions involved ~~as that~~ the ordinance,
 5 resolutions, rules, or orders of each public agency would have in its own territory or jurisdiction."
 6

7 **Section 43.** Section 67-10-221, MCA, is amended to read:

8 **"67-10-221. Airport property -- acquisition by eminent domain.** In the acquisition of property by
 9 eminent domain proceedings authorized by this chapter, the municipality shall proceed ~~in the manner as~~
 10 provided ~~by the laws governing eminent domain of the state of Montana~~ in Title 70, chapter 30. The
 11 municipality is not precluded from abandoning ~~such the~~ proceedings in any case ~~where in which~~ possession
 12 of the property has not been taken."
 13

14 **Section 44.** Section 67-11-201, MCA, is amended to read:

15 **"67-11-201. General powers of authority.** An authority has all the powers necessary or convenient
 16 to carry out the purposes of this chapter, including, subject to 15-10-420, the power to certify annually
 17 to the governing bodies creating it the amount of tax to be levied by the governing bodies for airport
 18 purposes. ~~and including but not limited to the power~~ Authority powers include but are not limited to the
 19 power to:

- 20 (1) sue and be sued, have a seal, and have perpetual succession;
- 21 (2) execute contracts and other instruments and take ~~such other action as that~~ may be necessary
 22 or convenient to carry out the purposes of this chapter;
- 23 (3) plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip,
 24 operate, regulate, and protect airports and air navigation facilities, within this state and within any
 25 adjoining state, including the acquisition, construction, installation, equipment, maintenance, and operation
 26 at the airports or buildings and other facilities for the servicing of aircraft or for comfort and
 27 accommodation of air travelers and the purchase and sale of supplies, goods, and commodities that are
 28 incident to the operation of its airport properties. For the authorized purposes, an authority may, by
 29 purchase, gift, devise, lease, eminent domain proceedings pursuant to Title 70, chapter 30, or otherwise,
 30 acquire property, real or personal, or any interest in property, including easements in airport hazards or land

1 outside the boundaries of an airport or airport site, that is necessary to permit the removal, elimination,
 2 obstruction-marking, or obstruction-lighting of airport hazards or to prevent the establishment of airport
 3 hazards.

4 (4) establish comprehensive airport zoning regulations in accordance with the laws of this state;

5 (5) acquire, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, existing
 6 airports and air navigation facilities; ~~provided, however~~ However, an authority may not acquire or take
 7 over any airport or air navigation facility owned or controlled by another authority, a municipality, or a
 8 public agency of this or any other state without the consent of the authority, municipality, or public
 9 agency;.

10 (6) establish or acquire and maintain airports in, over, and upon any public waters of this state
 11 or any submerged lands under public waters, provided that the authority has obtained the approval of the
 12 owner or agency that controls the water, and construct and maintain terminal buildings, landing floats,
 13 causeways, roadways, and bridges for approaches to or connecting with any airport and landing floats and
 14 breakwaters for the protection of the airport."

15

16 **Section 45.** Section 67-11-204, MCA, is amended to read:

17 **"67-11-204. Joint board.** (1) Public agencies acting jointly pursuant to 67-11-203 through
 18 67-11-205 shall create a joint board ~~which shall~~ that must consist of members appointed by the governing
 19 body of each participating public agency. The number of members to be appointed and their ~~term~~ terms
 20 and compensation, if any, ~~shall~~ must be provided for in the joint agreement. ~~Each~~ A joint board shall
 21 organize, select officers for ~~such~~ terms as ~~that~~ are fixed by the agreement, and adopt and amend from
 22 time to time rules for its own procedure. The joint board, as agent of the participating public agencies, may
 23 plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect,
 24 and police any airport or air navigation facility or airport hazard to be jointly acquired, controlled, and
 25 operated; ~~and the~~ Subject to subsection (2), the board may be authorized by the participating public
 26 agencies to exercise on behalf of its constituent public agencies all the powers of each public agency with
 27 respect to the airport, air navigation facility, or airport hazard, ~~subject to the limitations of subsection (2)~~
 28 ~~of this section.~~

29 (2) (a) The total expenditures to be made by the joint board for any purpose in ~~any~~ a calendar year
 30 ~~shall~~ must be as determined by a budget approved by the constituent public agencies on or before the

1 preceding June 10 or as otherwise specifically authorized by the constituent public agencies.

2 (b) ~~No~~ An airport, air navigation facility, airport hazard, or real or personal property, the cost of
3 which is in excess of sums fixed ~~therefor~~ by the joint agreement or allotted in the annual budget, may not
4 be acquired, established, or developed by the joint board without the approval of the governing bodies of
5 its constituent public agencies.

6 (c) Eminent domain proceedings under 67-11-203 through 67-11-205 and Title 70, chapter 30,
7 may be instituted by the joint board only by authority of the governing bodies of the constituent public
8 agencies of the joint board. If ~~so~~ authorized, ~~such~~ the proceedings ~~shall~~ must be instituted in the names
9 of the constituent public agencies jointly, and the property ~~so~~ acquired ~~shall~~ must be held by the public
10 agencies as tenants in common.

11 (d) The joint board may not dispose of any airport, air navigation facility, or real property under
12 its jurisdiction except with the consent of the governing bodies of its constituent public agencies.
13 However, the joint board may, without ~~such~~ consent, enter into contracts, leases, or other arrangements
14 contemplated by 67-11-211.

15 (e) Resolutions, rules, or orders of the joint board ~~dealing that deal~~ with subjects authorized by
16 67-11-211 become effective only upon approval of the governing bodies of the constituent public
17 agencies. However, upon ~~such~~ approval, the resolutions, rules, or orders of the joint board ~~shall~~ have the
18 same force in the territories or jurisdictions involved ~~as that~~ the ordinances, resolutions, rules, or orders
19 of each public agency would have in its own territory or jurisdiction."

20

21 **Section 46.** Section 67-11-231, MCA, is amended to read:

22 **"67-11-231. Airport property -- acquisition by eminent domain.** In the acquisition of property by
23 eminent domain proceedings authorized by this chapter, an airport authority shall proceed ~~in the manner~~
24 ~~provided by the laws of this state and such other laws that may now or hereafter apply to the state or to~~
25 ~~political subdivisions of this state in exercising the right of eminent domain as provided in Title 70, chapter~~
26 30. The municipality ~~shall~~ is not be precluded from abandoning ~~such~~ the proceedings in any case ~~where~~
27 in which possession of the property has not been taken."

28

29 **Section 47.** Section 67-11-401, MCA, is amended to read:

30 **"67-11-401. Out-of-state airport jurisdiction -- reciprocity.** (1) ~~This section may be cited as the~~

1 ~~"Extraterritorial Airports Section".~~

2 ~~———(2)~~ For the purpose of this section, "governmental agency" means any municipality, city, town,
3 county, public corporation, or other public agency.

4 ~~(3)(2)~~ This The state or any governmental agency of this state having any powers with respect
5 to planning, establishing, acquiring, developing, constructing, enlarging, improving, maintaining, equipping,
6 operating, regulating, or protecting airports or air navigation facilities within this state may exercise those
7 powers within any state or jurisdiction adjoining this state, subject to the laws of that state or jurisdiction.

8 ~~(4)(3)~~ (a) Any A state adjoining this state or any governmental agency ~~thereof~~ of an adjoining state
9 may plan, establish, acquire, develop, construct, enlarge, improve, maintain, equip, operate, regulate, and
10 protect airports and air navigation facilities within this state, subject to the laws of this state applicable
11 to airports and air navigation facilities. ~~The~~ Subject to subsection (3)(b), the adjoining state or
12 governmental agency ~~shall have~~ has the power of eminent domain in this state, which ~~shall~~ must be
13 exercised ~~in the manner provided by the laws of this state governing condemnation proceedings, provided~~
14 ~~that the~~ as provided in Title 70, chapter 30.

15 (b) The power of eminent domain ~~shall~~ may not be exercised unless the adjoining state authorizes
16 the exercise of that power ~~therein~~ in the adjoining state by this state or any governmental agency ~~thereof~~
17 of this state having any of the powers mentioned in this section.

18 ~~(5)(4)~~ The powers granted in this section may be exercised jointly by two or more states or
19 governmental agencies, including this state and its governmental agencies, in ~~such a~~ combination as that
20 may be agreed upon by ~~them~~ the states or governmental agencies."

21

22 **Section 48.** Section 69-13-104, MCA, is amended to read:

23 **"69-13-104. Use of power of eminent domain.** Every person, firm, corporation, limited
24 partnership, joint-stock association, or association of any kind mentioned in this chapter, ~~which shall have~~
25 that has filed with the commission its acceptance of the provisions of this chapter, ~~is hereby granted~~ has
26 the ~~right and~~ power of eminent domain, in ~~in~~ the exercise of ~~which he, it, or they~~ the power of eminent
27 domain, the entity may enter upon and condemn the land, rights-of-way, easements, and property of any
28 person or corporation necessary for the construction, maintenance, or authorization of ~~his, its, or their~~ the
29 entity's common carrier pipeline. ~~The manner and method of such condemnation and the assessment and~~
30 ~~payment of the damages therefor shall be the same as is provided by law in the case of railroads~~ power

1 of eminent domain must be exercised as provided in Title 70, chapter 30."

2

3 **Section 49.** Section 69-14-513, MCA, is amended to read:

4 **"69-14-513. Lease or purchase of other railroads.** (1) Any railroad corporation, whether chartered
5 by or organized under the laws of ~~the state or territory of~~ Montana, the United States, or any other state
6 ~~or territory~~, may lease or purchase the whole or any part of the railroad or rail line of railroad of any
7 railroad corporation, constructed or unconstructed, together with all the rights, powers, immunities,
8 privileges, franchises, and all other property or appurtenances ~~thereto~~ to the railroad or rail line. The
9 railroad company of any other state of the United States ~~which~~ that purchases or leases a railroad or any
10 part ~~thereof~~ of a railroad in this state:

11 (a) ~~shall possess~~ possesses and may exercise and enjoy, as to the control, management, and
12 operation of the road, all the rights, powers, privileges, and franchises possessed by railroad corporations
13 organized under the laws of this state, including the exercise of the power of eminent domain, as provided
14 in Title 70, chapter 30; and

15 (b) shall establish and maintain an office or offices in this state at some point or points on its line
16 at which legal process and notice may be served, as upon railroad corporations of this state.

17 (2) Any railroad company may sell or lease the whole or any part of its railroad or branches within
18 this state, constructed or to be constructed, together with all property and rights, privileges, and
19 franchises pertaining ~~thereto~~ to the railroad or branches, to any railroad company organized or existing
20 pursuant to the laws of the United States, this state, or any other state ~~or territory~~ of the United States.

21 (3) All roads or branches ~~thereof~~ of a railroad in this state, whether purchased or leased, ~~shall be~~
22 are subject to taxation and to regulation and control by the laws of this state; in all respects ~~the same~~
23 if the line were constructed by corporations organized under the laws of this state.

24 (4) Before any ~~such~~ lease or purchase ~~shall be~~ is effective, ~~it shall~~ the lease or purchase must be
25 assented to or approved or ratified by the stockholders of each corporation by a vote in favor ~~thereof~~ of
26 the lease or purchase, at a general or special meeting of ~~such~~ stockholders, by the holders of a majority
27 ~~in amount~~ of all the outstanding capital stock of the company."

28

29 **Section 50.** Section 69-14-536, MCA, is amended to read:

30 **"69-14-536. Extension of rail lines into Montana.** (1) Any railroad corporation chartered by or

1 organized under the laws of the United States or of any state ~~or territory~~ may extend, construct, maintain,
 2 and operate its railroad into and through this state to any place within the state and may build branches
 3 from any point on ~~such the~~ extension or continuation of any ~~such~~ extension or branch. Before making ~~such~~
 4 ~~an~~ extension into the state or building any ~~such~~ branch road or any ~~such~~ continuation, the corporation
 5 shall, by resolution of its board of directors, to be entered in the records of its proceedings, designate the
 6 general route of ~~such the~~ proposed extension, branch, or continuation and file a copy of ~~such the~~ record,
 7 certified by the president and secretary, in the office of the secretary of state; ~~who~~ The secretary of state
 8 shall record the ~~same resolution when presented for record. Thereupon such~~ After the recording, the
 9 corporations ~~shall~~ have all the rights, powers, privileges, immunities, and franchises to make, maintain,
 10 and operate ~~such the~~ extension and build, maintain, and operate ~~such the~~ branch or continuation, including
 11 the right of eminent domain as provided in Title 70, chapter 30, ~~which that~~ it would have ~~had~~ if it had
 12 been incorporated ~~for such purposes~~ under the general laws of Montana. Any corporation of another state
 13 or of the United States extending its railroad or any portion ~~thereof~~ of its railroad into or through this state:

14 (a) shall establish and maintain an office or offices in this state at some point or points on its line
 15 at which legal process and notice may be served, as upon railroad corporations of this state; and

16 (b) is subject to taxation and regulation and control by the laws of this state, in all respects ~~the~~
 17 ~~same~~ as if the line were constructed by corporations organized under the laws of this state.

18 (2) Before any railroad corporation organized under the laws of any other state ~~or territory~~ or of
 19 the United States ~~shall be~~ is permitted to avail itself of the benefits of this section, ~~such the~~ corporation
 20 shall file with the secretary of state a ~~true~~ copy of its charter or articles of incorporation."

21

22 **Section 51.** Section 69-14-552, MCA, is amended to read:

23 **"69-14-552. Authority to hold and transfer property.** Every railroad corporation ~~has power to~~ may:

24 (1) receive, hold, take, and convey, by deed or otherwise, as a natural person, ~~such~~ voluntary
 25 grants and donations of real estate and other property ~~which that~~ may be made to it the corporation to
 26 aid and encourage the construction, maintenance, and accommodation of ~~such the~~ railroad;

27 (2) purchase or by voluntary grants or donations receive, enter, take possession of, hold, and use
 28 all ~~such~~ real estate and other property ~~as that~~ may be absolutely necessary for the construction and
 29 maintenance of ~~such the~~ railroad and for all stations, depots, and other purposes necessary to successfully
 30 work and conduct the business of the ~~road~~ railroad;

1 (3) purchase ~~lands~~ land, timber, stone, gravel, or other ~~materials~~ material to be used in the
 2 construction and maintenance of its road and all related projects necessary ~~appendages and adjuncts~~ for
 3 the construction and maintenance of the railroad or acquire them in the manner provided in Title 70,
 4 chapter 30, for the condemnation of lands."

5

6 **Section 52.** Section 70-30-102, MCA, is amended to read:

7 **"70-30-102. Public uses enumerated.** Subject to the provisions of this chapter, the right of
 8 eminent domain may be exercised ~~in behalf of~~ for the following public uses:

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

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

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

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

15 (5) raising projects to raise the banks of streams, removing ~~remove~~ obstructions therefrom ~~from~~
 16 streambanks, and widening, deepening, or straightening their ~~widen, deepen, or straighten stream~~
 17 channels;

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

19 (7) roads, streets, and alleys, controlled-access facilities, and all other public uses for the benefit
 20 of ~~any~~ a county, city, or town or the inhabitants thereof, ~~which may be authorized by the legislature; but~~
 21 ~~the mode of apportioning and collecting the costs of such improvements shall be such as may be provided~~
 22 ~~in the statutes or ordinances by which the same may be authorized~~ of a county, city, or town;

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

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

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

26 (11) airport and landing field purposes as provided in 7-14-4801, 67-2-301, 67-5-202, 67-6-301,
 27 and Title 67, chapters 10 and 11;

28 (12) urban renewal projects as provided in Title 7, chapter 15, parts 42 and 43;

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 as provided in 7-35-2201 and cemetery association purposes as
 3 provided in 35-20-104;
- 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
 10 provided 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
 13 vehicle 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 ~~(4)(30) wharves, docks, piers, chutes, booms, ferries, bridges, of all kinds, private roads, plank~~
 20 ~~and turnpike roads, and railroads;~~
- 21 (31) canals, ditches, flumes, aqueducts, and pipes for public transportation;
- 22 (a) supplying mines, mills, and smelters for the reduction of ores; and
- 23 (b) supplying farming neighborhoods with water and drainage; and
- 24 (c) reclaiming lands; and for
- 25 (d) floating logs and lumber on streams that are not navigable; and
- 26 (32) sites for reservoirs necessary for collecting and storing water. However, such reservoir sites
 27 must possess a public use demonstrable to the district court as the highest and best use of the land.
- 28 ~~(5)(33) roads, tunnels, ditches, flumes, pipes, and dumping places for working mines, mills, or~~
 29 ~~smelters for the reduction of ores;~~
- 30 (34) also outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter

1 from mines, mills, and smelters for the reduction of ores;

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

7 ~~(6)(36)~~ private roads leading from highways to residences or farms;

8 ~~(7)(37)~~ telephone or ~~electric light~~ electrical energy lines;

9 ~~(8)(38)~~ telegraph lines;

10 ~~(9)(39)~~ sewerage of any:

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

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

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

15 ~~(10)(40)~~ tramway lines;

16 ~~(11)~~ electric power lines;

17 ~~(12)(41)~~ logging railways;

18 ~~(13)(42)~~ temporary logging roads and banking grounds for the transportation of logs and timber
19 products to public streams, lakes, mills, railroads, or highways for ~~such a time as that~~ that the court or judge
20 may determine; ~~provided~~ However, the grounds of state institutions ~~be excepted;~~ may not be used for
21 this purpose.

22 ~~(14)(43)~~ underground reservoirs suitable for storage of natural gas;

23 ~~(15)(44)~~ projects to mine and extract ores, metals, or minerals owned by the ~~plaintiff~~ condemnor
24 located beneath or upon the surface of property where the title to ~~said~~ the surface vests in others.
25 However, the use of the surface of property for strip mining or open-pit mining of coal (i.e., any mining
26 method or process in which the strata or overburden is removed or displaced in order to extract the coal)
27 is not a public use, and eminent domain may not be exercised for this purpose;

28 ~~(16)(45)~~ projects to restore and reclaim lands ~~strip or underground mined~~ that were strip mined
29 or underground mined for coal and not reclaimed in accordance with Title 82, chapter 4, part 2, and to
30 abate or control adverse affects of strip or underground mining on those lands."

1

2 **Section 53.** Section 70-30-103, MCA, is amended to read:

3 **"70-30-103. What private property may be taken.** (1) The ~~private property which~~ that may be
4 taken under this chapter includes:

5 (a) all real property belonging to any person;

6 (b) ~~lands belonging~~ land that belongs to this state or to any county, city, or town and that is not
7 appropriated to some public use;

8 (c) property appropriated to a public use, but ~~such~~ the property ~~must~~ may not be taken unless for
9 a more necessary public use than that to which it has already been appropriated;

10 (d) franchises for roads, bridges, and ferries and all other franchises; but ~~such~~ the franchises ~~must~~
11 may not be taken unless for free highways, free bridges, railroads, or ~~other~~ another more necessary public
12 use; or

13 (e) ~~all rights-of-way~~ a right-of-way for any ~~and all the purposes~~ public use mentioned in 70-30-102
14 and any ~~and all~~ structures and improvements ~~thereon~~ on the right-of-way, and the lands. The land held
15 and used in connection ~~therewith~~ with the right-of-way must be subject to ~~be~~ being connected with,
16 crossed, or intersected by any other right-of-way ~~of~~ improvements or structures ~~thereon~~ on the
17 right-of-way. ~~They~~ The improvements or structures must also be subject to a limited use in common with
18 the owner ~~thereof~~ of the improvements or structures when necessary; ~~but such~~ However, the uses,
19 crossings, intersections, and connections must be made in the manner that is most compatible with the
20 greatest public benefit and least private injury.

21 (2) All classes of private property not enumerated may be taken for public use when ~~such~~ the
22 taking is authorized by law."

23

24 **Section 54.** Section 70-30-104, MCA, is amended to read:

25 **"70-30-104. What estates and rights in land may be taken.** The following is a classification of the
26 estates and rights in ~~lands~~ land subject to ~~be taken~~ taking for ~~the~~ public use:

27 (1) ~~such estate~~ estates or rights ~~as may be~~ that are necessary, up to and including a fee simple,
28 when taken for:

29 (a) public buildings or grounds; ~~or for~~

30 (b) permanent buildings; ~~or for~~

1 (c) an outlet for a flow or a place for the deposit of debris or tailings of a mine; ~~or for~~

2 (d) the mining and extracting of ores, metals, or minerals when the ~~same ores, metals, or minerals~~

3 are owned by the ~~plaintiff~~ condemnor but are located beneath or upon the surface of property ~~where for~~

4 which the title to ~~said~~ the surface vests in others; or

5 (e) ~~for~~ the underground storage of natural gas by a natural gas public utility as defined in

6 82-10-301. When the ~~appropriation~~ taking is for the underground storage of natural gas, all of the right,

7 title, interest, and estate in the real property and in the subsand stratum, formation, or reservoir ~~so~~

8 ~~appropriated~~ shall taken must be determinable and for all purposes ~~terminate~~ terminates upon abandonment

9 or upon cessation for the period of 1 year of the use for which the ~~same property~~ was ~~appropriated~~; taken.

10 ~~and thereupon~~ Upon the abandonment or cessation, the ownership of the residue of natural gas ~~therein~~

11 remaining ~~shall likewise vest in the reservoir~~ vests in the ~~then~~ current owners of ~~such~~ the surface property

12 over the reservoir space.

13 (2) ~~such~~ the estate or rights in the surface ~~as~~ property that are necessary for a reservoir or dam

14 and for the permanent flooding that results from the reservoir or dam, up to the edge of the maximum pool

15 of the reservoir;

16 (3) an easement, leasehold, or other interest, for ~~so~~ as long as the interest is necessary for the

17 purpose described in the complaint, or fee simple when taken for any other use;

18 (4) the right of entry upon and occupation of land and the right to take ~~therefrom~~ such from the

19 land any earth, gravel, stones, trees, and timber ~~as~~ that may be necessary for some public use."

20

21 **Section 55.** Section 70-30-105, MCA, is amended to read:

22 **"70-30-105. Appropriation Taking of underground natural gas storage reservoir -- effect on**

23 **owner's right to drill.** (1) The ~~appropriation~~ taking of any sand, stratum, or formation for use as an

24 underground natural gas storage reservoir ~~shall be~~ is without prejudice to the rights of the owner or owners

25 of ~~said lands~~ the land or of the oil, gas, or other mineral rights ~~therein~~ in the land to drill or bore through

26 the sand, stratum, or formation ~~so~~ appropriated taken for use as an underground natural gas storage

27 reservoir in order to explore for, produce, process, treat, or market any oil, gas, or other minerals that

28 might be contained in ~~said lands~~ the land above or below the sand, stratum, or formation ~~so~~ appropriated

29 taken.

30 (2) Any additional cost or expense required to be incurred in order to protect the underground

1 natural gas storage reservoir against pollution and the escape of the gas ~~therefrom~~ from the reservoir by
 2 reason of ~~such~~ boring or drilling through ~~of~~ the sand, stratum, or formation used as ~~such an~~ underground
 3 natural gas storage reservoir ~~shall~~ must be paid by the persons, firm, or corporation ~~then~~ owning ~~such the~~
 4 underground natural gas storage reservoir at the time of the boring or drilling."

5

6 **Section 56.** Section 70-30-106, MCA, is amended to read:

7 **"70-30-106. Eminent domain not to be used for coal mining in certain cases -- policy.** (1) For the
 8 ~~following~~ reasons contained in this section, the state's power of eminent domain may not be exercised
 9 to mine and extract coal owned by the ~~plaintiff~~ condemnor located beneath the surface of property ~~where~~
 10 for which the title to the surface is vested in others;.

11 ~~(1)(2)~~ Because of the large reserves of and the renewed interest in coal in eastern Montana, coal
 12 development is potentially more destructive to land and watercourses and underground aquifers and
 13 potentially more extensive geographically than the foreseeable development of other ores, metals, or
 14 minerals and affects large areas of land and large numbers of people.

15 ~~(2)(3)~~ In ~~many~~ certain areas of Montana ~~set forth~~ referred to in ~~(1) hereinabove~~ subsection (2),
 16 the title to the surface property is vested in an owner other than the mineral owner; and the surface owner
 17 is putting that surface property to a productive use, and it is the public policy of the state to encourage
 18 and foster ~~such that~~ productive use by ~~such the surface owner, and to.~~ To permit the mineral owner to
 19 condemn the surface ~~owner~~ owner's property is to deprive the surface owner of the right to use ~~his~~ the
 20 property in a the productive manner ~~as he~~ that the surface owner determines and is also contrary to public
 21 policy ~~as~~ set forth in subsection ~~(4)~~ (5).

22 ~~(3)(4)~~ The magnitude of the potential coal development in eastern Montana will subject
 23 landowners to undue harassment by excessive use of eminent domain.

24 ~~(4)(5)~~ It is the public policy of the state to encourage and foster diversity of land ownership, and
 25 the surface mining of coal and control of large areas of land by the surface coal mining industry would not
 26 ~~foster~~ promote public policy and further the public interest."

27

28 **Section 57.** Section 70-30-107, MCA, is amended to read:

29 **"70-30-107. Private roads.** Private roads may be opened in the manner prescribed by this chapter,
 30 but in every case the necessity of the road and the amount of all damage to be sustained by the opening

1 ~~thereof shall~~ of the road must be first determined by a jury, and ~~such~~ the amount of damages, together
 2 with the expenses of the proceeding, ~~shall~~ must be paid by the person to be benefited."

3

4 **Section 58.** Section 70-30-108, MCA, is amended to read:

5 **"70-30-108. No abrogation of provisions relating to city or county roads.** ~~Nothing in this code~~
 6 ~~must~~ This chapter may not be construed to abrogate or repeal any statute providing for the taking of
 7 property in any county, city, or town, ~~or county~~ for road or street purposes."

8

9 **Section 59.** Section 70-30-109, MCA, is amended to read:

10 **"70-30-109. Temporary logging roads and banking grounds.** (1) In the event that a temporary
 11 ~~roads~~ road used for logging purposes or ~~grounds~~ land used for banking ~~purposes are opened or grounds~~
 12 ~~is~~ taken, the ~~same shall include~~ taking includes only the temporary right to use the ~~same,~~ and the road or
 13 land. The order of condemnation for ~~said~~ the road ~~shall~~ or land must fix the length of time and the date
 14 from which ~~such~~ the road ~~shall~~ must be opened or land ~~shall~~ must be used, and at the expiration of ~~said~~
 15 ~~that~~ period ~~so fixed,~~ the right to use ~~said~~ the road or land ~~shall cease,~~ ceases. ~~and the~~ The use of ~~said~~ the
 16 road or land shall revert reverts to the party from whom the ~~same is~~ road or land was taken or to ~~his~~ that
 17 party's legal successor in interest; ~~provided, that no lands or grounds shall.~~ However, land may not be
 18 taken for ~~such~~ temporary logging roads or banking grounds for a period of time longer than 5 years; ~~and~~
 19 ~~when~~ When taken for a period of time exceeding 1 year, the amount of damage for ~~such~~ each year ~~shall~~
 20 must be fixed separately, and the amount fixed for each particular year must be paid on or before January
 21 1 of each year; ~~and in the event that~~ If the amount ~~so~~ fixed for any ~~one~~ 1 year is not paid as ~~herein~~
 22 specified in this subsection, then ~~and in that event~~ the use of ~~such lands shall revert~~ the road or land
 23 reverts to the party from whom the ~~same is~~ road or land was taken or to ~~his~~ that party's successor in
 24 interest.

25 (2) In any suit for the opening of any temporary logging road or for the use of any ~~ground or land~~
 26 for banking ~~purposes~~ grounds, the court ~~shall~~ may not finally order the opening of ~~such~~ the road or the
 27 right to use ~~such~~ the land ~~or ground~~ until the amount assessed as damages has been paid into court for
 28 the benefit of the party or parties owning or holding ~~such~~ the road or land.

29 (3) In the event that any ~~such~~ road or land taken or used as provided in this section is occupied
 30 by a lessee, ~~such~~ the lessee ~~shall~~ must be made a party to the suit, and the final decree of the court ~~shall~~

1 must apportion the amount of compensation received between the lessee and the owner of ~~such lands,~~
 2 the road or land. ~~such~~ The decree being is subject to the right of appeal ~~of~~ by any party in interest."

3

4 **Section 60.** Section 70-30-110, MCA, is amended to read:

5 **"70-30-110. Survey and location of property to be taken -- greatest public good -- least private**
 6 **injury.** In all cases ~~where~~ in which land is required for public use, the state or its agents in charge of ~~such~~
 7 the public use may survey and locate the ~~same,~~ land to be used. ~~but it~~ The use must be located in the
 8 manner ~~which~~ that will be most compatible with the greatest public good and the least private injury, and
 9 the location is subject to the provisions of 70-30-206. The state or its agents in charge of ~~such~~ the public
 10 use may, after giving 30 days' written notice to the owners and persons in possession of the land, enter
 11 upon the land and make examination, surveys, and maps ~~thereof,~~ of the land. ~~and such~~ The entry shall
 12 does not constitute ~~no~~ a cause of action in favor of the owners of the land except from injuries resulting
 13 from negligence, ~~wantonness,~~ or ~~malice~~ intentional acts. Upon written request of the state or its agents,
 14 the owner shall provide the names and addresses of all persons who are in possession of ~~his~~ the owner's
 15 land within 14 days from receipt of the written notice. The state or its agents shall within 14 days from
 16 receipt of ~~such~~ that information furnish written notice to ~~such~~ the listed persons."

17

18 **Section 61.** Section 70-30-111, MCA, is amended to read:

19 **"70-30-111. Facts necessary to be found before condemnation.** Before property can be taken,
 20 the ~~plaintiff must~~ condemnor shall show by a preponderance of the evidence that the public interest
 21 requires the taking based on the following findings:

- 22 (1) ~~that~~ the use to which ~~it~~ the property is to be applied is a use authorized by law;
- 23 (2) ~~that~~ the taking is necessary to ~~such~~ the use;
- 24 (3) if already ~~appropriated to some~~ being used for a public use, that the public use ~~to~~ for which
 25 ~~it~~ the property is proposed to be ~~applied~~ used is a more necessary public use;
- 26 (4) ~~that~~ an effort to obtain the property interest sought to be ~~condemned~~ taken was made by
 27 submission of a written offer and ~~that such~~ the offer was rejected."

28

29 **Section 62.** Section 70-30-202, MCA, is amended to read:

30 **"70-30-202. Jurisdiction and venue -- complaint and summons required.** All proceedings under

1 this chapter must be brought in the district court of the county in which the property or some part thereof
 2 of the property is situated. ~~They~~ A proceeding must be commenced by filing a complaint and issuing a
 3 summons ~~thereon~~. A summons served under this chapter must contain a notice to the ~~defendant~~
 4 condemnee to file and serve an answer. Within 6 months from the date that the summons is served,
 5 unless the court shortens or ~~enlarges~~ lengthens that time for good cause, the court, sitting without a jury,
 6 shall commence ~~its~~ a trial on the issue of whether a preliminary condemnation order should be issued."

7

8 **Section 63.** Section 70-30-203, MCA, is amended to read:

9 **"70-30-203. Contents of complaint.** (1) The complaint for condemnation must ~~allege~~ contain:

10 ~~(1)(a)~~ (a) the name of the corporation, association, commission, or person in charge of the public use
 11 for which the property is sought to be taken, who ~~must be styled~~ is the plaintiff;

12 ~~(2)(b)~~ (b) the names of all owners, purchasers under contracts for deed, mortgagees, and lienholders
 13 of record and any other claimants ~~of the property~~ of record of the property sought to be taken, if known,
 14 or a statement that they are unknown, who ~~must be styled~~ are the defendants;

15 ~~(3)(c)~~ (c) a statement of the right of the plaintiff to take property for public use;

16 ~~(4)(d)~~ (d) statements of each of the facts necessary to be found in 70-30-111; and

17 (e) a description of each interest in real property sought to be taken, a statement of whether the
 18 property sought to be taken includes the whole or only a part of the entire parcel or tract, and a statement
 19 that the interest sought is the minimum necessary interest. All parcels lying in the county and required for
 20 the same public use may be included in the same or separate proceedings, at the option of the plaintiff,
 21 but the court may consolidate or separate them to suit the convenience of the parties.

22 ~~(5)(2)~~ (2) if if a right-of-way is sought, in addition to the items listed in subsection (1), the complaint
 23 must show the location, general route, and termini and must be accompanied with a map ~~thereof~~ of the
 24 route, so far as the ~~same~~ route is involved in the action or proceeding;

25 ~~(6)~~ a description of each interest in real property sought to be taken and whether the same
 26 includes the whole or only a part of the entire parcel or tract and a statement that the interest sought is
 27 the minimum necessary interest. All parcels lying in the county and required for the same public use may
 28 be included in the same or separate proceedings, at the option of the plaintiff, but the court may
 29 consolidate or separate them to suit the convenience of the parties.

30 ~~(7)(3)~~ (3) (a) if if a sand, stratum, or formation suitable for use as an underground natural gas storage

1 reservoir is sought to be ~~appropriated taken~~, in addition to the items listed in subsection (1), the complaint
 2 must include a description ~~thereof~~ of the reservoir and of the land in which ~~it~~ the reservoir is alleged to
 3 be contained and a description of all other property and rights sought to be ~~appropriated taken~~ for use in
 4 connection with the ~~appropriation of the right to store natural gas in and withdraw natural gas from~~ such
 5 the reservoir.

6 (b) In addition, the complaint ~~shall~~ must state facts showing that:

7 (i) the ~~underground~~ reservoir is ~~one~~ subject to ~~appropriation~~ being taken by the plaintiff;

8 (ii) ~~also stating that~~ the underground storage of natural gas in the land sought to be ~~appropriated~~
 9 taken is in the public interest;

10 (iii) that the ~~underground~~ reservoir is suitable and practicable for natural gas storage;

11 (iv) ~~that~~ the plaintiff in good faith has been unable to acquire the rights sought to be ~~appropriated~~
 12 hereunder taken; and

13 (v) a statement that the rights and property sought to be ~~appropriated taken~~ are not prohibited
 14 by law, from being taken.

15 (c) ~~and in addition, the~~ The complaint must be accompanied by a certificate from the board of oil
 16 and gas conservation as ~~set forth~~ provided in 82-10-304."

17

18 **Section 64.** Section 70-30-206, MCA, is amended to read:

19 **"70-30-206. Powers of court -- preliminary condemnation order.** (1) ~~The~~ In a condemnation
 20 proceeding, the court has power to ~~may~~:

21 (a) regulate and determine the place and manner of:

22 (i) making the connections and crossings and enjoying the common uses mentioned in
 23 70-30-103(1)(e); and

24 (ii) ~~of the~~ occupying ~~of~~ canyons, passes, and defiles for railroad purposes, as permitted and
 25 regulated by the laws of this state or of the United States; or

26 (b) limit the interest in real property sought to be ~~appropriated taken~~ if in the opinion of the court
 27 the interest sought is not necessary.

28 (2) If the court finds and concludes from the evidence presented that the public interest requires
 29 the taking of such an interest in real property and that the ~~plaintiff~~ condemnor has met ~~his~~ the burden of
 30 proof under 70-30-111, ~~it must forthwith make and~~ the court shall enter a preliminary condemnation order

1 providing that the condemnation of the interest in real property may proceed in accordance with the
2 provisions of this chapter.

3 (3) (a) If the property sought to be ~~appropriated~~ taken is a sand, stratum, or formation suitable
4 for use as an underground natural gas storage reservoir and the existence and suitability of it the property
5 for ~~such that~~ use has been proved by ~~plaintiff~~ the condemnor based upon substantial evidence, the order
6 of the court ~~shall~~ must direct the condemnation commissioners to ~~ascertain and~~ determine the amount to
7 be paid by the ~~plaintiff~~ condemnor to each person for ~~his~~ each person's interest in the property sought to
8 be ~~appropriated~~ taken for use as ~~such an~~ underground natural gas storage reservoir ~~and/or as~~.

9 (b) In addition to or in lieu of the amount paid under subsection (3)(a), the court may direct the
10 commissioners to determine the annual rental for:

11 (i) the use of ~~such the~~ underground natural gas storage reservoir;

12 (ii) ~~and for~~ the use of so much of the surface as is required in the operation of the ~~underground gas~~
13 ~~storage~~ reservoir and for the use in connection with the creation, operation, and maintenance ~~thereof of~~
14 the reservoir; and

15 (iii) ~~for~~ all the native gas contained in ~~said the~~ reservoir ~~as compensation and damages by reason~~
16 ~~of the appropriation of such property~~. However, the amount to be paid for ~~such the~~ native gas ~~and all~~
17 ~~thereof shall be no~~ may not be less than the market value of ~~such the~~ gas.

18 (4) The court shall appoint three persons, qualified and recommended as experts ~~and~~
19 ~~recommended as such~~ by the board of oil and gas conservation, to assist and advise the commissioners
20 in determining the compensation and damages to be paid by ~~plaintiff~~ the condemnor to each person for
21 ~~his~~ each person's interest in the property sought to be ~~appropriated, taken, and the~~ The fees and expenses
22 of ~~such persons shall be~~ the experts are chargeable as costs of the proceedings to be paid by the ~~plaintiff~~
23 condemnor.

24 ~~(4)(5)~~ After a complaint as described in 70-30-203 is filed and prior to the issuance of the
25 preliminary condemnation order, all parties shall proceed as expeditiously as possible, but without
26 prejudicing any party's position, with all aspects of the preliminary condemnation proceeding including
27 discovery and trial. The court shall give ~~such the~~ proceedings expeditious and priority consideration. The
28 preliminary condemnation proceeding ~~shall~~ must be tried by the court sitting without a jury."

29

30 **Section 65.** Section 70-30-207, MCA, is amended to read:

1 **"70-30-207. Appointment of condemnation commissioners -- affidavit -- compensation.** (1) Within
 2 30 days of entry of a preliminary condemnation order, the ~~defendant~~ condemnee shall file a statement of
 3 ~~his~~ the condemnee's claim of just compensation. If within 20 days of service of ~~defendant's~~ the
 4 condemnee's claim ~~plaintiff~~ the condemnor fails to accept the claim, the court ~~must~~ shall appoint
 5 condemnation commissioners, ~~and the~~ The commission hearing may be waived by written consent of both
 6 parties, in which case the proceeding ~~shall~~ must be conducted in the district court as if the case had been
 7 appealed from an award by ~~such~~ the commissioners.

8 (2) The court ~~must thereupon~~ shall appoint three qualified, disinterested condemnation
 9 commissioners, unless appointment has been waived. One of ~~such~~ the commissioners ~~shall~~ must be
 10 nominated by the ~~party or parties~~ plaintiff condemnor. One of ~~such~~ the commissioners ~~shall~~ must be
 11 nominated by the ~~party or parties~~ defendant condemnee. The third commissioner ~~shall be the chairman~~ is
 12 the presiding officer and ~~shall~~ must be nominated by the two commissioners previously nominated.
 13 However, if ~~said~~ the two commissioners fail to make ~~such~~ the choice at the time of their appointment, then
 14 ~~such~~ the nomination ~~shall~~ must be made by the presiding judge.

15 (3) Each commissioner ~~shall possess the following qualifications:~~

16 (a) ~~that he is possessed of~~ must have sufficient knowledge of the English language;

17 (b) ~~that he is~~ must be a resident of a county within the judicial district in which the action is
 18 pending;

19 (c) ~~that he is not~~ may not be related within the sixth degree of consanguinity to any party; and

20 (d) ~~that he does~~ may not stand in the relation of guardian and ward, master and servant, debtor
 21 and creditor, ~~or~~ principal and agent, or partner or surety ~~as~~ to any party.

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

25 (a) ~~that he~~ the person has ~~not~~ no ~~an~~ unqualified opinion or belief as to the compensation
 26 to be awarded in the proceeding or as to the fairness or unfairness of the ~~plaintiff's~~ condemnor's offer
 27 for the lands and improvements of the ~~defendants~~ condemnee;

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

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

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

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

9

10 **Section 66.** Section 70-30-301, MCA, is amended to read:

11 **"70-30-301. Hearing -- judge to preside -- determinations by condemnation commissioners.** (1)
 12 ~~Immediately upon nomination and appointment of commissioners under 70-30-207, the same shall proceed~~
 13 ~~to~~ The condemnation commissioners shall meet at the time and place stated in the order appointing them,
 14 ~~which~~ The meeting time ~~shall~~ may not be more than 10 days after the order of ~~appointing~~ appointment,
 15 ~~and proceed to~~ The commissioners shall examine the lands sought to be ~~appropriated~~ taken. At a time
 16 appointed by the judge and within ~~said~~ the 10-day period, ~~they~~ the commissioners shall hear the allegations
 17 and evidence of all persons interested in each ~~of the several parcels~~ parcel of land.

18 (2) ~~Such~~ The hearing ~~shall~~ must be attended by and presided over by the presiding judge, who
 19 shall make all necessary rulings upon procedure and the admissibility of evidence.

20 (3) (a) ~~At~~ At the conclusion of the ~~aforsaid~~ hearing, the ~~court~~ or judge shall instruct the
 21 commissioners as to the law applicable to their deliberations and shall instruct them that their duty is to
 22 determine, based solely upon ~~the basis of said~~ their examination of lands, the evidence produced at the
 23 hearing or hearings, and the instructions of the court, the ~~following~~ appropriate findings provided for in
 24 subsections (3)(b) through (3)(d).

25 (a)(b) The commissioners shall determine the current fair market value of the real property sought
 26 to be ~~appropriated~~ taken and all improvements ~~thereon~~ pertaining to the ~~realty~~ real property and of each
 27 ~~and every~~ separate estate and interest ~~therein~~ in the real property and improvements. If it the real property
 28 consists of different parcels, the current fair market value of each parcel and each estate or interest ~~therein~~
 29 in the real property must be separately assessed.

30 (b)(c) (i) ~~if~~ if the property sought to be ~~appropriated~~ taken constitutes only a part of a larger parcel,

1 ~~the commissioners shall determine~~ the depreciation in current fair market value ~~which that~~ will accrue to
 2 ~~the portion not sought to be condemned~~ remaining parcel by reason of its severance from the portion
 3 ~~sought to be condemned~~ the condemnation and the construction of the improvements in the manner
 4 proposed by the ~~plaintiff,~~ condemnor.

5 (e)(ii) ~~separately,~~ The commissioners shall also determine how much the ~~portion not sought to be~~
 6 ~~condemned~~ remaining parcel and each estate or interest ~~therein in the remaining parcel~~ will be benefited,
 7 if at all, by the construction of the improvements proposed by the ~~plaintiff, condemnor,~~ and if ~~if~~ the benefit
 8 ~~shall be is~~ equal to the amount assessed under subsection ~~(3)(b)~~ (3)(c)(i), the ~~owner of the parcel shall be~~
 9 ~~allowed no compensation except~~ compensation to the condemnee is limited to the value of the portion
 10 taken; ~~but~~ However, if the ~~benefits shall be~~ benefit is less than the amount assessed under subsection
 11 ~~(3)(b)~~ (3)(c)(i), the ~~former shall~~ benefit to the condemnee must be deducted from the ~~latter,~~ amount
 12 assessed under subsection (3)(c)(i) and the remainder ~~shall be is~~ the only amount allowed in addition to
 13 the current fair market value;.

14 (d) ~~if~~ if the property sought to be ~~condemned be~~ taken is for a railroad, the commissioners shall
 15 also determine the cost of good and sufficient fences along the line of ~~such the~~ railroad and the cost of
 16 cattle guards where fences may cross the line of ~~such the~~ railroad.

17 (4) ~~Where~~ When there are two or more estates or divided interests in property sought to be
 18 ~~condemned taken,~~ the ~~plaintiff condemnor~~ is entitled to have the amount of the award for ~~said the~~ property
 19 first determined, ~~as hereinbefore stated,~~ as between ~~plaintiff the condemnor~~ and all ~~defendants~~
 20 ~~condemnees~~ claiming any ~~interests therein~~ interest in the property. ~~Thereafter in~~ In the same proceeding,
 21 the respective rights of each of ~~such defendants~~ the condemnees in and to the total award ~~shall~~ must be
 22 determined by the commissioners, under supervision and instruction of the court, and the award must be
 23 apportioned accordingly."

24

25 **Section 67.** Section 70-30-302, MCA, is amended to read:

26 **"70-30-302. Assessing compensation -- date and measure -- interest.** (1) For the purpose of
 27 assessing compensation, the right ~~thereto shall be deemed~~ to compensation is considered to have accrued
 28 at the date of the service of the summons, and ~~its~~ the property's current fair market value as of that date
 29 ~~shall be is~~ the measure of compensation for all property to be actually taken and the basis of depreciation
 30 in the current fair market value of property not actually taken but injuriously affected. This ~~shall~~ subsection

1 may not be construed to limit the amount of compensation payable by the department of transportation
2 under the provisions of any legislation enacted pursuant to the federal Highway Beautification Act of 1965.

3 (2) If an order ~~be is~~ made ~~letting~~ allowing the ~~plaintiff into~~ condemnor to take possession, as
4 provided in 70-30-311, the full amount finally awarded ~~shall~~ must draw interest at the rate of 10% ~~per~~
5 ~~annum~~ a year from the date of the service of the summons to the earlier of the following dates:

6 (a) the date on which the right to appeal to the Montana supreme court expires or, if an appeal
7 is filed, ~~to~~ the date of final decision by the supreme court; or

8 (b) the date on which the ~~property owner~~ condemnee withdraws from the court the full amount
9 finally awarded.

10 (3) If the ~~property owner~~ condemnee withdraws from the court a fraction of the amount finally
11 awarded, interest on ~~such that~~ fraction ~~shall cease~~ ceases on the date it is withdrawn but interest on the
12 remainder of the amount finally awarded ~~shall continue~~ continues to the earlier of the ~~aforsaid~~
13 ~~defined~~ referred to in subsections (2)(a) and (2)(b) ~~of this section~~ until the full amount is withdrawn from
14 the court.

15 (4) None of the amount finally awarded ~~shall draw~~ draws interest after the date on which the right
16 to appeal to the Montana supreme court expires.

17 (5) ~~No improvements~~ Improvements put upon the property subsequent to the date of the service
18 of summons ~~shall may not~~ be included in the assessment of compensation or depreciation in current fair
19 market value, ~~nor shall the same~~ and may not be used as the basis of computing ~~such~~ compensation or
20 depreciation."

21

22 **Section 68.** Section 70-30-303, MCA, is amended to read:

23 **"70-30-303. Final report and award of condemnation commissioners -- procedure on failure to**
24 **agree.** (1) The report of the condemnation commissioners ~~shall~~ must be made on ~~such~~ forms ~~as~~ that are
25 provided for their use by ~~authority~~ of the court. The report must be filed within 10 days after the
26 completion of the hearing or within ~~such any~~ additional time ~~as~~ allowed by the judge upon a clear showing
27 of necessity, ~~and~~ The report must be filed with the clerk of court. The clerk shall notify the parties
28 ~~interested~~ that the report has been filed, ~~which~~ The notice, together with a ~~true~~ copy of the report, must
29 be served upon all the parties ~~interested~~ in the same manner as a summons.

30 (2) A concurrence of two commissioners is necessary to the making of a final report or award as

1 to any parcel of property or interest ~~therein in a parcel of property~~. If ~~no~~ two of the commissioners are ~~able~~
 2 ~~unable~~ to agree as to the amount of any award, ~~they~~ the commissioners shall report the fact to the judge
 3 or court within the time ~~herein~~ specified in subsection (1) and the court shall ~~forthwith~~ impanel and appoint
 4 new commissioners ~~as herein provided,~~ which The new commissioners shall proceed as provided ~~herein~~
 5 in this part to determine any award upon which the previous commissioners failed to agree.

6 (3) The report of the commissioners ~~shall also state~~ must include a statement of the number of
 7 days or portions ~~thereof consumed~~ of days worked by the commissioners in performance of their duties
 8 ~~as prescribed herein."~~

9

10 **Section 69.** Section 70-30-304, MCA, is amended to read:

11 **"70-30-304. Appeal to district court from assessment of condemnation commissioners.** (1) ~~An~~
 12 Any party may appeal from any assessment made by the condemnation commissioners ~~may be taken and~~
 13 ~~prosecuted~~ in the court ~~where~~ in which the report of ~~said~~ the commissioners is filed ~~by any party~~
 14 interested. ~~Such~~ The appeal must be taken within the ~~period of~~ 30 days after the service upon ~~appellant~~
 15 the parties of the notice of the filing of the award, ~~by the service of~~ The appealing party shall serve notice
 16 of ~~such~~ the appeal upon the opposing party or ~~his~~ the opposing party's attorney ~~in such proceedings~~ and
 17 ~~the filing of the same~~ shall file the notice of appeal in the district court ~~wherein~~ in which the action is
 18 pending, ~~and the same shall be brought on for trial~~ The appeal must be tried upon the same notice and
 19 in the same manner as other civil actions, ~~and unless~~ Unless a jury ~~shall be~~ is waived by the consent of
 20 all parties to ~~such~~ the appeal, ~~the same shall~~ appeal must be tried by a jury, ~~and the~~. The amount to which
 21 ~~appellant~~ the condemnee may be entitled, by reason of the ~~appropriation~~ taking of ~~his~~ the condemnee's
 22 property, ~~shall~~ must be reassessed ~~upon the same principle as hereinbefore~~ as prescribed in this part for
 23 the assessment of ~~such~~ that amount by the commissioners.

24 (2) Upon any verdict or assessment by the commissioners becoming final, judgment ~~shall~~ must
 25 be entered declaring that upon payment of ~~such~~ the amount of the verdict or assessment, together with
 26 the interests and costs allowed by law, if any, the condemnor has the right to construct and maintain the
 27 ~~highway, railroad, or other public work or improvement~~ public use project and to take, ~~use, and appropriate~~
 28 the property described in ~~such~~ the verdict or assessment for the use and purposes for which ~~said land~~ the
 29 property has been ~~condemned~~ taken, ~~shall, as against the parties interested in such verdict or assessment,~~
 30 ~~be and~~ The rights granted in the verdict or assessment remain in the plaintiff condemnor and ~~his or its~~ the

1 condemnor's heirs, successors, or assigns forever.

2 (3) ~~In case~~ if the party appealing from the award of the commissioners ~~in any proceeding, as~~
 3 ~~aforsaid, shall~~ does not succeed in changing to ~~his~~ the appellant's advantage the amount finally awarded
 4 in ~~such~~ the proceeding, ~~he shall~~ the appellant may not recover the costs of ~~such~~ the appeal, but all the
 5 costs of the appellee ~~upon such~~ in the appeal ~~shall~~ must be taxed against and recovered from the
 6 appellant; ~~provided, that~~ However, upon the trial of ~~such~~ the appeal, the ~~plaintiff~~ appellant may contest
 7 the right of any party ~~or parties thereto~~ to any of the property mentioned and set forth or involved in ~~said~~
 8 the appeal, ~~which that~~ was located after the preliminary survey of any ~~such~~ highway or railroad, seeking
 9 to condemn ~~its~~ a right-of-way ~~under and~~ pursuant to the provisions of this chapter, ~~provided such~~ if the
 10 condemnation proceedings are begun within 1 year after ~~such~~ the preliminary survey."

11

12 **Section 70.** Section 70-30-305, MCA, is amended to read:

13 **"70-30-305. Condemnor to make offer upon appeal -- award of expenses of litigation.** (1) The
 14 condemnor shall, within 30 days after an appeal is perfected from the condemnation commissioner's
 15 award or report or not more than 60 days after the waiver of appointment of ~~condemnation~~
 16 commissioners, submit to the condemnee a written final offer of judgment for the property sought to be
 17 ~~condemned~~ taken, together with the accrued necessary expenses of the condemnee ~~then accrued~~. If at
 18 any time prior to 10 days before trial the condemnee serves written notice that the offer is accepted,
 19 either party may then file the offer and notice of acceptance, together with proof of service ~~thereof~~ of the
 20 acceptance, and ~~thereupon~~ judgment ~~shall~~ must be entered. An offer not accepted ~~shall be deemed~~ is
 21 considered withdrawn and evidence ~~thereof~~ of the offer is not admissible at the trial except in a proceeding
 22 to determine costs. The fact that an offer is made but not accepted does not preclude a subsequent offer.

23 (2) In the event of litigation and when the ~~private property owner~~ condemnee prevails by receiving
 24 an award in excess of the final offer of the condemnor, the court shall award necessary expenses of
 25 litigation to the condemnee."

26

27 **Section 71.** Section 70-30-306, MCA, is amended to read:

28 **"70-30-306. Necessary expenses of litigation defined.** (1) Necessary expenses of litigation as
 29 authorized by 70-30-305 mean reasonable and necessary attorney fees, expert witness fees, exhibit costs,
 30 and court costs.

1 (2) Reasonable and necessary attorney fees are the customary hourly rates for an attorney's
 2 services in the county in which the trial is held. Reasonable and necessary attorney fees ~~shall~~ must be
 3 computed on an hourly basis and may not be computed on the basis of any contingent fee contract
 4 ~~entered into after July 1, 1977.~~

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

7

8 **Section 72.** Section 70-30-307, MCA, is amended to read:

9 **"70-30-307. When payment of compensation to be made -- deposit of bond.** ~~The plaintiff must~~
 10 In a proceeding for condemnation for a railroad, the condemnor shall within 30 days after final judgment
 11 pay the sum of money assessed but may at the time of or before the payment elect to build ~~the~~ any
 12 required fences and cattle guards, ~~and, if he so elect, A condemnor who elects to build the required fences~~
 13 and cattle guards shall execute to the ~~defendant~~ condemnee a bond with sureties to be approved by the
 14 court, in double the assessed cost of the ~~same~~ fences and cattle guards, ~~to build such~~ conditioned upon
 15 building the fences and cattle guards within 8 months from the time the railroad is built on the land taken,
 16 ~~and, if such~~ If the bond be is given, the condemnor need is not required to pay the cost of ~~such~~ the fences
 17 and cattle guards. In an action on ~~such~~ the bond, the ~~plaintiff~~ condemnee may recover reasonable
 18 ~~attorney's~~ attorney fees."

19

20 **Section 73.** Section 70-30-308, MCA, is amended to read:

21 **"70-30-308. How payment made -- execution or annulment for nonpayment.** (1) Payment may
 22 be made to the ~~defendants~~ entitled thereto condemnee, or the money may be deposited in court for the
 23 ~~defendants~~ condemnee and be distributed ~~to those entitled thereto~~ pursuant to the assessment or
 24 judgment. However, at the option of the ~~defendants~~ condemnee, payments may be made:

25 (a) on an annual basis, ~~utilizing~~ using the installment contract method; or

26 (b) if other land is reasonably available and the ~~plaintiff~~ condemnor consents, by means of a land
 27 exchange between the ~~defendants~~ condemnee and ~~plaintiffs~~ condemnor if the land to be provided by the
 28 ~~plaintiffs~~ condemnor in the exchange is of equal or more value than the land being condemned.

29 (2) If the money ~~be~~ is not ~~so~~ paid or deposited, the ~~defendants~~ condemnee may have execution
 30 as in civil cases, and if the money cannot be ~~made on execution~~ executed upon, the court, upon a showing

1 to that effect, ~~must~~ shall set aside and annul the entire proceedings and restore possession of the property
 2 to the ~~defendant~~ condemnee if possession has been taken by the ~~plaintiff~~ condemnor."

3

4 **Section 74.** Section 70-30-309, MCA, is amended to read:

5 **"70-30-309. Final order of condemnation -- contents -- vesting upon filing.** (1) When payments
 6 have been made and the bond, if appropriate, has been given, ~~if the plaintiff elects to give one~~, as required
 7 by 70-30-307 and 70-30-308, the court ~~must~~ shall make a final order of condemnation, ~~which~~ The order
 8 must describe the property condemned and the purposes of such the condemnation.

9 (2) A copy of the order must be filed in the office of the county clerk and recorder, and ~~thereupon~~
 10 upon filing, the property described ~~therein shall vest in the order vests~~ in the ~~plaintiff~~ condemnor for the
 11 purposes ~~therein~~ specified in the order."

12

13 **Section 75.** Section 70-30-310, MCA, is amended to read:

14 **"70-30-310. New proceedings to cure defective title.** If the title to property attempted to be
 15 acquired is found to be defective from any cause, the ~~plaintiff~~ condemnor may again institute proceedings
 16 to acquire the ~~same~~ property, as prescribed in this chapter ~~prescribed~~."

17

18 **Section 76.** Section 70-30-311, MCA, is amended to read:

19 **"70-30-311. Putting ~~plaintiff~~ condemnor in possession.** (1) At any time after the filing of the
 20 preliminary condemnation order ~~or after the report and assessment of the commissioners have been made~~
 21 ~~and filed in the court and either before or after appeal from such assessment or from any other order or~~
 22 judgment in the proceedings and while it retains jurisdiction, the court upon application of the ~~plaintiff shall~~
 23 ~~have power to~~ condemnor may make an order that, upon payment into court ~~for the defendant entitled~~
 24 ~~thereto~~ of the amount of compensation claimed by the ~~defendant~~ condemnee in ~~his~~ the condemnee's
 25 statement of claim of just compensation under 70-30-207 or the amount assessed either by the
 26 commissioners or by the jury, ~~as the case may be~~, the ~~plaintiff~~ condemnor is authorized:

27 (a) if already in possession of the property of ~~such defendant~~ the condemnee that is sought to
 28 be ~~appropriated~~ taken, to continue in ~~such~~ possession; or

29 (b) if not in possession, to take possession of ~~such~~ the property and use and possess the ~~same~~
 30 property during the pendency and until the final conclusion of the proceedings and litigation and that all

1 actions and proceedings against the plaintiff condemnor on account ~~thereof~~ of the possession are
2 stayed until such that time.

3 (2) If the ~~defendant~~ condemnee fails to file a statement of claim of just compensation within the
4 time specified in 70-30-207, the plaintiff condemnor may obtain an order for possession provided for in
5 subsection (1), subject to the condition subsequent that a plaintiff's condemnor's payment into court ~~shall~~
6 must be made within 10 days of receipt of the ~~defendant's~~ condemnee's statement of claim.

7 (3) However, ~~where~~ when an appeal is taken by ~~such defendant~~ the condemnee, the court may;
8 ~~in its discretion~~, require the plaintiff condemnor before continuing or taking such possession, in addition
9 to paying into court the amount assessed, to give a bond or undertaking with sufficient sureties ~~to be~~
10 approved by the court and ~~to be~~ in such sum as an amount that the court may direct, conditioned to pay
11 the ~~defendant~~ condemnee any additional damages and costs ~~over and~~ above the amount assessed, which
12 ~~it may~~ is finally ~~be~~ determined as the amount that ~~defendant~~ the condemnee is entitled to for the
13 ~~appropriation~~ taking of the property, and all damages ~~which defendant~~ that the condemnee may sustain
14 if for any cause ~~such the~~ property shall is not ~~be~~ finally taken for public ~~uses~~ use.

15 (4) The amount assessed by the commissioners or by the jury on appeal, ~~as the case may be~~, shall
16 ~~be taken and~~ is considered, for the purposes of this section, and until reassessed or changed in the further
17 proceedings, as just compensation for the property ~~appropriated~~, taken. ~~but~~ However, the plaintiff
18 condemnor, by payment into court of the amount claimed in the answer or the amount assessed or by
19 giving security as ~~above~~ provided in subsection (3), ~~shall may~~ not be ~~thereby~~ prevented ~~or precluded~~ from
20 appealing from ~~such the~~ assessment but may appeal in the same manner and with the same effect as if
21 ~~no~~ money had not been deposited or security had not been given.

22 (5) ~~(a) In~~ Subject to subsection (5)(b), in all cases ~~where in which~~ the plaintiff condemnor deposits
23 the amount of the assessment and continues in possession or takes possession of the property, as ~~herein~~
24 provided in this section, the ~~defendant entitled thereto~~ condemnee, if there ~~be~~ is no dispute as to the
25 ownership of the property, may at any time demand and receive upon order of the court all or any part of
26 the money ~~so deposited~~, and shall not by such The demand or receipt ~~be barred or precluded from his~~ may
27 not preclude the condemnee's right of appeal from ~~such the~~ assessment, ~~but may, notwithstanding, take~~
28 ~~and prosecute his appeal from such assessment~~, ~~provided that~~ However, if the amount of ~~such the~~
29 assessment is finally reduced on appeal by either party, ~~such defendant~~ the condemnee who has received
30 all or any part of the amount deposited ~~shall be~~ is liable to the plaintiff condemnor for any excess of the

1 amount ~~so~~ received by ~~him~~ over the amount finally assessed, with legal interest on ~~such~~ the excess from
 2 the time ~~such defendant~~ the condemnee received the money deposited, ~~and the same~~ The excess, plus
 3 interest, may be recovered by a civil action, ~~and provided, further, that upon~~ Upon any appeal from an
 4 assessment by the commissioners to a jury, the jury may ~~find a less as well as an equal or greater amount~~
 5 ~~than that assessed by the commissioners; and provided, further, that the~~ make a finding for any amount
 6 that it considers appropriate.

7 (b) ~~The~~ court ~~shall~~ may not order the delivery to any ~~defendant~~ condemnee of more than 75% of
 8 the money deposited on ~~his~~ the condemnee's account except upon posting of bond by ~~such defendant~~ the
 9 condemnee equal to the amount in excess of 75%, with sureties to be approved by the court, to repay
 10 to the ~~plaintiff~~ such condemnor amounts withdrawn ~~as that~~ are in excess of ~~his~~ the condemnee's final
 11 award in the proceedings."

12

13 **Section 77.** Section 70-30-312, MCA, is amended to read:

14 **"70-30-312. Appeal to supreme court.** (1) ~~The plaintiff or defendant or any~~ Any party interested
 15 in the proceedings can appeal to the supreme court from any finding or judgment made or rendered under
 16 this chapter, as in other cases.

17 (2) ~~Such~~ An appeal does not stay any further proceedings under this chapter, except that the
 18 district court on motion or ex parte may grant a stay for ~~such~~ a period of time and under ~~such~~
 19 as that the court ~~deems~~ considers proper."

20

21 **Section 78.** Section 70-30-314, MCA, is amended to read:

22 **"70-30-314. Weed control responsibility.** The ~~plaintiff~~ condemnor, upon taking possession of the
 23 land, is responsible for the control and destruction of noxious weeds on ~~such~~ the land until natural grasses
 24 have taken over the property and noxious weeds have ceased to exist."

25

26 **Section 79.** Section 70-30-315, MCA, is amended to read:

27 **"70-30-315. Proration of taxes.** The ~~plaintiff~~ condemnor ~~must~~ be assessed ~~his~~ the
 28 condemnor's pro rata share of taxes for the land being ~~condemned~~ taken as of the date of possession or
 29 summons, whichever occurs first. The ~~plaintiff~~ condemnor ~~must~~ be assessed for all taxes accruing
 30 after the date of possession or summons, whichever occurs first."

1

2 **Section 80.** Section 70-30-321, MCA, is amended to read:

3 **"70-30-321. Sale of property acquired for public use when use abandoned -- procedure.** (1) Except
4 as provided in subsection (3), whenever a person who has acquired a real property interest for a public
5 use, whether by right of eminent domain or otherwise, abandons ~~such the~~ public use and places ~~such the~~
6 property interest for sale, the seller may sell the interest to the highest bidder at public auction.

7 (2) ~~In the event~~ If the seller decides to sell an interest in real property as set forth in subsection
8 (1), ~~he the seller~~ shall publish notice of the public sale in a newspaper published in the county in which
9 the real property ~~interest~~ is located once a week for 4 successive weeks. ~~Sale shall~~ The sale must be held
10 in the county where the real property ~~interest~~ is located. The notice of sale ~~shall~~ must contain the
11 information required by 77-2-322.

12 (3) When an interest, other than a fee simple interest, in property, ~~which that~~ has been acquired
13 for a public purpose by right of eminent domain, or otherwise, is abandoned or when the purpose for which
14 it was acquired is terminated, the property reverts to the original owner or ~~his~~ the original owner's
15 successor in interest."

16

17 **Section 81.** Section 70-30-322, MCA, is amended to read:

18 **"70-30-322. Option of original owner or successor in interest to purchase at sale price.** (1) Except
19 as provided in subsection (3), the owner from whom the real property interest was originally acquired by
20 eminent domain or otherwise or the owner's successor in interest, if there is a successor in interest, ~~the~~
21 ~~owner or his successor in interest shall~~ must be notified by the seller by certified mail and ~~shall have~~ has
22 a 30-day option from the date of a sale provided for in 70-30-321 to purchase the interest by offering
23 ~~therefor~~ an amount of money equal to the highest bid received for the interest at the sale. If more than
24 one person claims an equal entitlement, the option may not be exercised.

25 (2) If ~~no~~ bids are not received by the seller and the optionholder indicates in writing to the seller
26 that ~~he~~ the optionholder wishes to exercise the option, the seller shall have the real property interest
27 appraised and sell the interest at that price to the optionholder.

28 (3) When an interest, other than a fee simple interest, in property, ~~which that~~ has been acquired
29 for a public purpose by right of eminent domain, or otherwise, is abandoned or when the purpose for which
30 it was acquired is terminated, the property reverts to the original owner or ~~his~~ the original owner's

1 successor in interest."

2

3 **Section 82.** Section 70-31-102, MCA, is amended to read:

4 **"70-31-102. Definitions.** As used in this chapter, unless the context otherwise requires, the
5 following definitions apply:

6 (1) "Agency" means ~~any~~ a department, agency, or instrumentality of the state of Montana or of
7 a political subdivision of the state, ~~any~~ a department, agency, or instrumentality of two or more states or
8 two or more political subdivisions of the state or of two or more states, ~~and any or a~~ a person who has the
9 authority to acquire property by eminent domain ~~under state law~~ as provided in Title 70, chapter 30.

10 (2) "Appraisal" means a written statement, independently and impartially prepared by a qualified
11 appraiser, setting forth an opinion of defined value of an adequately described property as of a specified
12 date and supported by the presentation and analysis of relevant market information.

13 (3) "Average annual net earnings" means one-half of any net earnings of a business or farm
14 operation, before federal and state income taxes, during the 2 ~~taxable~~ tax years immediately preceding the
15 ~~taxable~~ tax year in which the business or farm operation moves from real property acquired for a project
16 of an agency (for which federal financial assistance is available to pay all or any part of the cost) or during
17 any other period that the acquiring agency determines to be more equitable for establishing earnings and
18 includes any compensation paid by the business or farm operation to the owner, ~~his~~ the owner's spouse,
19 or ~~his~~ the owner's dependents during the period.

20 (4) "Business" means any lawful activity, ~~excepting~~ except a farm operation, conducted:

21 (a) primarily for the purchase, sale, lease, and rental of personal and real property and for the
22 manufacture, processing, or marketing of products, commodities, or any other personal property;

23 (b) primarily for the sale of services to the public;

24 (c) primarily by a nonprofit organization; or

25 (d) solely for the purposes of paying moving or related expenses, ~~for assisting~~ to assist in the
26 purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property,
27 or services by the erection and maintenance of an outdoor advertising display or displays, whether or not
28 the display or displays are located on the premises on which any of the ~~above~~ activities included as a
29 business are conducted.

30 (5) (a) "Displaced person" means:

1 (i) any person who moves from real property or moves ~~his~~ that person's personal property from
2 real property:

3 (A) as a direct result of a written notice of intent to acquire or by the acquisition of the real
4 property, in whole or in part, for a program or project undertaken by a displacing agency for which federal
5 financial assistance will be available to pay all or any part of the cost; or

6 (B) on which ~~he~~ the person is a residential tenant or conducts a small business, farm operation,
7 or a business defined in subsection (4)(d), as a direct result of rehabilitation, demolition, or other displacing
8 activity prescribed by the agency under a program or project undertaken by a displacing agency that has
9 determined that the displacement is permanent and for which federal financial assistance will be available
10 to pay all or any part of the cost;

11 (ii) any person who, for purposes of providing moving and related expenses or relocation advisory
12 services only, moves from real property or moves ~~his~~ that person's personal property from real property
13 as a direct result of:

14 (A) a written notice of intent to acquire or as a direct result of the acquisition of other real
15 property, in whole or in part, on which the person conducts a business or farm operation, for a program
16 or project undertaken by a displacing agency; or

17 (B) the rehabilitation, demolition, or other displacing activity prescribed by the agency under a
18 program or project undertaken by a displacing agency that has determined that the displacement is
19 permanent.

20 (b) The term "displaced person" does not include a person who:

21 (i) has been determined, according to criteria established by the agency, to be either unlawfully
22 occupying the displacement dwelling or to have been occupying the dwelling for the purpose of obtaining
23 assistance under this part; or

24 (ii) occupies property owned by the agency on a short-term rental basis or for a period subject to
25 termination when the property is needed for the program or project and who was not an occupant of the
26 property at the time it was acquired by the agency.

27 (6) "Farm operation" means any activity conducted solely or primarily for the production of one
28 or more agricultural products or commodities, including timber, for sale or home use and customarily
29 producing ~~such~~ agricultural products or commodities in sufficient quantity to be capable of contributing
30 materially to the operator's support.

1 (7) "Federal act" means the "Uniform Relocation Assistance and Real Property Acquisition Policies
2 Act of 1970" or as that act may be amended.

3 (8) "Federal financial assistance" means a grant, loan, or contribution provided by the United
4 States, except any federal guarantee or insurance.

5 (9) "Person" means any individual, partnership, corporation, or association."
6

7 **Section 83.** Section 70-31-104, MCA, is amended to read:

8 **"70-31-104. New rights and powers not created.** (1) ~~Nothing in this~~ This chapter ~~shall~~ may not
9 be construed as creating, in any condemnation proceedings brought under the power of eminent domain
10 as provided in Title 70, chapter 30, any element of value or damage that is not in existence immediately
11 prior to July 1, 1971.

12 (2) ~~Nothing in this~~ This chapter ~~shall~~ may not be construed as, directly or indirectly, granting any
13 new or additional power of eminent domain."
14

15 **Section 84.** Section 70-31-105, MCA, is amended to read:

16 **"70-31-105. Duplication of eminent domain payments not intended.** ~~No~~ A payment or assistance
17 provided for in this chapter ~~shall~~ may not be required to be made by an agency if the displaced person
18 receives a payment required ~~by the laws of eminent domain which~~ under Title 60, chapter 4, or Title 70,
19 chapter 30, that is determined by the agency to have substantially the same purpose and effect as ~~such~~
20 a payment under this chapter."
21

22 **Section 85.** Section 70-31-301, MCA, is amended to read:

23 **"70-31-301. Appraisal, negotiation, and other condemnation policies mandated.** An agency ~~which~~
24 that acquires real property for a program or project (for which federal financial assistance will be available
25 to pay all or any part of the cost of ~~such~~ the program or project) shall comply with the following policies:

26 (1) The agency shall make every reasonable effort to ~~acquire~~ expeditiously acquire real property
27 by negotiation.

28 (2) Real property ~~shall~~ must be appraised before the initiation of negotiations, and the owner or
29 ~~his~~ or the owner's designated representative ~~shall~~ must be given an opportunity to accompany the
30 appraiser during ~~his~~ the appraiser's inspection of the property. The head of the agency may prescribe a

1 procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a
2 low fair market value.

3 (3) Before the initiation of negotiations for real property, an amount ~~shall~~ must be established
4 ~~which that~~ it is reasonably believed is to be just compensation therefor for the property or interest taken,
5 and ~~such that~~ amount ~~shall~~ must be offered for the property. ~~In no event shall such~~ The amount may not
6 be less than the approved appraisal of the fair market value of ~~such the~~ property. Any decrease or increase
7 in the fair market value of real property prior to the date of valuation caused by the public improvement
8 for which ~~such the~~ property is acquired or by the likelihood that the property would be acquired for ~~such~~
9 the improvement, other than ~~that~~ an amount due to physical deterioration within the reasonable control
10 of the owner, ~~shall~~ must be disregarded in determining the compensation for the property. The owner of
11 the real property to be acquired ~~shall~~ must be provided with a written statement of and summary of the
12 basis for the amount established as just compensation. ~~Where~~ When appropriate, the just compensation
13 for the real property acquired and for damages to remaining real property ~~shall~~ must be separately stated.

14 (4) ~~No~~ An owner ~~shall~~ may not be required to surrender possession of real property before the
15 agreed purchase price is paid or before there is deposited with the court, in accordance with applicable
16 law, for the benefit of the owner, an amount not less than the approved appraisal of the fair market value
17 of ~~such the~~ property or the amount of the award of compensation in the condemnation proceeding of ~~such~~
18 the property.

19 (5) The construction or development of a program or project (for which federal financial assistance
20 will be available to pay all or any part of the cost of the program or project) ~~shall~~ must be ~~so~~ scheduled
21 so that, to the greatest extent practicable, ~~no a~~ person lawfully occupying real property ~~shall be~~ is not
22 required to move from a dwelling (assuming a replacement dwelling will be available) or to move ~~his~~ the
23 person's business or farm operation without at least 90 days' written notice of the date by which ~~such~~
24 a move is required.

25 (6) If an owner or tenant is permitted to occupy the real property acquired on a rental basis for
26 a short term or for a period subject to termination by the acquiring agency on short notice, the amount of
27 rent required ~~shall~~ may not exceed the fair rental value of the property to a short-term occupier.

28 (7) ~~In no event shall the~~ The time of condemnation may not be advanced, ~~or~~ negotiations or
29 condemnation and the deposit of funds in court for the use of the owner may not be deferred, ~~or~~ and any
30 other action coercive in nature may not be taken to compel an agreement on the price to be paid for the

1 property.

2 (8) If an interest in real property is to be acquired by exercise of the power of eminent domain,
3 formal condemnation proceedings ~~shall~~ must be instituted as provided in Title 70, chapter 30. The
4 acquiring agency ~~shall~~ may not intentionally make it necessary for an owner to institute legal proceedings
5 to prove the fact of the taking of ~~his~~ the owner's real property.

6 (9) If the acquisition of only part of the property would leave its owner with an uneconomic
7 remnant, an offer to acquire the uneconomic remnant ~~shall~~ must be made.

8 (10) A person whose real property is being acquired may, after being fully informed of ~~his~~ the
9 person's right to receive just compensation, donate to an agency the property, any interest in the property,
10 or any compensation received for the property."

11

12 **Section 86.** Section 70-31-311, MCA, is amended to read:

13 **"70-31-311. Relocation payments and assistance.** For any project that results in the displacement
14 of a person from ~~his~~ the person's home, business, or farm and for which federal financial assistance may
15 be available to pay all or any part of the cost of displacement, an entity of the state or any public or
16 private entity that has the authority to acquire property by eminent domain under ~~state law~~ Title 60,
17 chapter 4, or Title 70, chapter 30, is authorized to provide relocation assistance and to make relocation
18 payments to the full extent permitted by the federal relocation assistance law, 42 U.S.C. 4601, et seq.,
19 as amended. The entity is authorized to do what may be necessary or required to obtain for property
20 owners the full benefit of federal relocation assistance, including the adoption of methods of administration
21 ~~as that~~ as may be required by federal law or rules to carry out the operation of relocation assistance."

22

23 **Section 87.** Section 70-32-216, MCA, is amended to read:

24 **"70-32-216. Tracing homestead proceeds.** (1) If property or a part ~~thereof~~ of property that could
25 have been claimed as an exempt homestead has been sold or taken by condemnation, as provided in Title
26 60, chapter 4, or Title 70, chapter 30, or has been lost, damaged, or destroyed and the owner has been
27 indemnified for ~~it~~ the property, ~~he~~ the owner is entitled for 18 months to exemption of the proceeds that
28 are traceable.

29 (2) Proceeds are traceable under this section by application of the principles of first-in first-out,
30 last-in first-out, or any other reasonable basis for tracing selected by the judgment debtor."

1

2 **Section 88.** Section 75-10-715, MCA, is amended to read:

3 **"75-10-715. Liability -- reimbursement and penalties -- proceedings -- defenses and exclusions.**

4 (1) Except as provided in 75-10-742 through 75-10-752, notwithstanding any other provision of law, and
5 subject only to the defenses set forth in subsection (5) and the exclusions set forth in subsection (7), the
6 following persons are jointly and severally liable for a release or threatened release of a hazardous or
7 deleterious substance from a facility:

8 (a) a person who owns or operates a facility where a hazardous or deleterious substance was
9 disposed of;

10 (b) a person who at the time of disposal of a hazardous or deleterious substance owned or
11 operated a facility where the hazardous or deleterious substance was disposed of;

12 (c) a person who generated, possessed, or was otherwise responsible for a hazardous or
13 deleterious substance and who, by contract, agreement, or otherwise, arranged for disposal or treatment
14 of the substance or arranged with a transporter for transport of the substance for disposal or treatment;
15 and

16 (d) a person who accepts or has accepted a hazardous or deleterious substance for transport to
17 a disposal or treatment facility.

18 (2) A person identified in subsection (1) is liable for the following costs:

19 (a) all remedial action costs incurred by the state; and

20 (b) damages for injury to, destruction of, or loss of natural resources caused by the release or
21 threatened release, including the reasonable technical and legal costs of assessing and enforcing a claim
22 for the injury, destruction, or loss resulting from the release, unless the impaired natural resources were
23 specifically identified as an irreversible and irretrievable commitment of natural resources in an approved
24 final state or federal environmental impact statement or other comparable approved final environmental
25 analysis for a project or facility that was the subject of a governmental permit or license and the project
26 or facility was being operated within the terms of its permit or license.

27 (3) If the person liable under subsection (1) fails, without sufficient cause, to comply with a
28 department order issued pursuant to 75-10-711(4) or to properly provide remedial action upon notification
29 by the department pursuant to 75-10-711(3), the person may be liable for penalties in an amount not to
30 exceed two times the amount of any costs incurred by the state pursuant to this section.

1 (4) The department may initiate civil proceedings in district court to recover remedial action costs,
2 natural resource damages, or penalties under subsections (1), (2), and (3). Proceedings to recover costs
3 and penalties must be conducted in accordance with 75-10-722. Venue for any action to recover costs,
4 damages, or penalties lies in the county where the release occurred or where the person liable under
5 subsection (1) resides or has its principal place of business or in the district court of the first judicial
6 district.

7 (5) A person has a defense and is not liable under subsections (1), (2), and (3) if the person can
8 establish by a preponderance of the evidence that:

9 (a) the department failed to follow the notice provisions of 75-10-711 when required;

10 (b) the release did not emanate from any vessel, vehicle, or facility to which the person
11 contributed any hazardous or deleterious substance or over which the person had any ownership,
12 authority, or control and was not caused by any action or omission of the person;

13 (c) the release or threatened release occurred solely as a result of:

14 (i) an act or omission of a third party other than either an employee or agent of the person; or

15 (ii) an act or omission of a third party other than one whose act or omission occurs in connection
16 with a contractual relationship, existing directly or indirectly, with the person, if the person establishes by
17 a preponderance of the evidence that the person:

18 (A) exercised due care with respect to the hazardous or deleterious substance concerned, taking
19 into consideration the characteristics of the hazardous or deleterious substance in light of all relevant facts
20 and circumstances; and

21 (B) took precautions against foreseeable acts or omissions of a third party and the consequences
22 that could foreseeably result from those acts or omissions;

23 (d) the release or threat of release occurred solely as the result of an act of God or an act of war;

24 (e) the release or threatened release was from a facility for which a permit had been issued by the
25 department, the hazardous or deleterious substance was specifically identified in the permit, and the
26 release was within the limits allowed in the permit;

27 (f) in the case of assessment of penalties under subsection (3), factors beyond the control of the
28 person prevented the person from taking timely remedial action; or

29 (g) the person transported only household refuse, unless that person knew or reasonably should
30 have known that the hazardous or deleterious substance was present in the refuse.

1 (6) (a) For the purpose of subsection (5)(c)(ii), the term "contractual relationship" includes but is
2 not limited to land contracts, deeds, or other instruments transferring title or possession, unless the real
3 property on which the facility is located was acquired by the person after the disposal or placement of the
4 hazardous or deleterious substance on, in, or at the facility and one or more of the following circumstances
5 is also established by the person by a preponderance of the evidence:

6 (i) At the time the person acquired the facility, the person did not know and had no reason to
7 know that a hazardous or deleterious substance that is the subject of the release or threatened release was
8 disposed of on, in, or at the facility.

9 (ii) The person is a governmental entity that acquired the facility by escheat, lien foreclosure, or
10 through any other involuntary transfer or acquisition or through the exercise of eminent domain authority
11 by purchase or condemnation pursuant to Title 70, chapter 30.

12 (iii) The person acquired the facility by inheritance or bequest.

13 (b) In addition to establishing one or more of the circumstances in subsection (6)(a)(i) through
14 (6)(a)(iii), the person shall establish that the person has satisfied the requirements of subsection (5)(c)(i)
15 or (5)(c)(ii).

16 (c) To establish that the person had no reason to know, as provided in subsection (6)(a)(i), the
17 person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership
18 and uses of the property consistent with good commercial or customary practice in an effort to minimize
19 liability. For purposes of assessing this inquiry, the following must be taken into account:

20 (i) any specialized knowledge or experience on the part of the person;

21 (ii) the relationship of the purchase price to the value of the property if uncontaminated;

22 (iii) commonly known or reasonably ascertainable information about the property;

23 (iv) the obviousness of the presence or the likely presence of contamination on the property; and

24 (v) the ability to detect the contamination by appropriate inspection.

25 (d) (i) Subsections (5)(b) and (5)(c) or this subsection (6) may not diminish the liability of a
26 previous owner or operator of the facility who would otherwise be liable under this part.

27 (ii) Notwithstanding this subsection (6), if the previous owner or operator obtained actual
28 knowledge of the release or threatened release of a hazardous or deleterious substance at the facility when
29 the person owned the real property and then subsequently transferred ownership of the property to
30 another person without disclosing the knowledge, the previous owner is liable under subsections (1), (2),

1 and (3) and a defense under subsection (5)(b) or (5)(c) is not available to that person.

2 (e) ~~Subsection~~ This subsection (6) does not affect the liability under this part of a person who,
3 by any act or omission, caused or contributed to the release or threatened release of a hazardous or
4 deleterious substance that is the subject of the action relating to the facility.

5 (7) A person has an exclusion and is not liable under this section if:

6 (a) the person generated or disposed of only household refuse, unless the person knew or
7 reasonably should have known that the hazardous or deleterious substance was present in the refuse;

8 (b) the person owns or operates real property where hazardous or deleterious substances have
9 come to be located solely as a result of subsurface migration in an aquifer from a source or sources outside
10 the person's property, provided that the following conditions are met:

11 (i) the owner or operator did not cause, contribute to, or exacerbate the release or threatened
12 release of any hazardous or deleterious substances through any act or omission. The failure to take
13 affirmative steps to mitigate or address contamination that has migrated from a source outside the owner's
14 or operator's property does not, in the absence of exceptional circumstances, constitute an omission by
15 the owner or operator.

16 (ii) the person who caused, contributed to, or exacerbated the release or threatened release of any
17 hazardous or deleterious substance is not and was not an agent or employee of the owner or operator and
18 is not or was not in a direct or indirect contractual relationship with the owner or operator, unless the
19 department provides a written determination that an existing or proposed contractual relationship is an
20 insufficient basis to establish liability under this section;

21 (iii) there is no other basis of liability under subsection (1) for the owner or operator for the release
22 or threatened release of a hazardous or deleterious substance; and

23 (iv) the owner or operator cooperates with the department and all persons conducting
24 department-approved remedial actions on the property, including granting access and complying with and
25 implementing all required institutional controls;

26 (c) the person owns or occupies real property of 20 acres or less for residential purposes, provided
27 that the following conditions are met:

28 (i) the person did not cause, contribute to, or exacerbate the release or threatened release of any
29 hazardous or deleterious substance through any act or omission;

30 (ii) the person uses or allows the use of the real property for residential purposes. This exclusion

1 does not apply to any person who acquires or develops real property for commercial use or any use other
2 than residential use.

3 (iii) at the time the person purchased or occupied the real property, there were no visible indications
4 of contamination on the surface of the real property;

5 (iv) the person cooperates with the department and all persons conducting department-approved
6 remedial actions on the property, including granting access and complying with and implementing all
7 required institutional controls; and

8 (v) there is no other basis of liability under subsection (1) for the owner or occupier for the release
9 or threatened release of a hazardous or deleterious substance.

10 (8) A person is liable under this section if the department provides substantial credible evidence
11 that the person fails to satisfy any element of each exclusion in subsections (7)(a) through (7)(c).

12 (9) The liability of a fiduciary under the provisions of this part for a release or a threatened release
13 of a hazardous or deleterious substance from a facility held in a fiduciary capacity may not exceed the
14 assets held in the fiduciary capacity that are available to indemnify the fiduciary unless the fiduciary is
15 liable under this part independent of the person's ownership or actions taken in a fiduciary capacity.

16 (10) A person who holds indicia of ownership in a facility primarily to protect a security interest
17 is not liable under subsections (1)(a) and (1)(b) for having participated in the management of a facility
18 within the meaning of 75-10-701(15)(b) because of any one or any combination of the following:

19 (a) holding an interest in real or personal property when the interest is being held as security for
20 payment or performance of an obligation, including but not limited to a mortgage, deed of trust, lien,
21 security interest, assignment, pledge, or other right or encumbrance against real or personal property that
22 is furnished by the owner to ensure repayment of a financial obligation;

23 (b) requiring or conducting financial or environmental assessments of a facility or a portion of a
24 facility, making financing conditional upon environmental compliance, or providing environmental
25 information or reports;

26 (c) monitoring the operations conducted at a facility or providing access to a facility to the
27 department or its agents or to remedial action contractors;

28 (d) having the mere capacity or unexercised right to influence a facility's management of
29 hazardous or deleterious substances;

30 (e) giving advice, information, guidance, or direction concerning the administrative and financial

1 aspects, as opposed to day-to-day operational aspects, of a borrower's operations;

2 (f) providing general information concerning federal, state, or local laws governing the
3 transportation, storage, treatment, and disposal of hazardous or deleterious substances and concerning
4 the hiring of remedial action contractors;

5 (g) engaging in financial workouts, restructuring, or refinancing of a borrower's obligations;

6 (h) collecting rent, maintaining utility services, securing a facility from unauthorized entry, or
7 undertaking other activities to protect or preserve the value of the security interest in a facility;

8 (i) extending or denying credit to a person owning or in lawful possession of a facility;

9 (j) in an emergency, requiring or undertaking activities to prevent exposure of persons to
10 hazardous or deleterious substances or to contain a release;

11 (k) requiring or conducting remedial action in response to a release or threatened release if prior
12 notice is given to the department and the department approves of the remedial action; or

13 (l) taking title to a facility by foreclosure, provided that the holder of indicia of ownership, from
14 the time the holder acquires title, undertakes to sell, re-lease property held pursuant to a lease financing
15 transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise
16 divest itself of the property in a reasonably expeditious manner, using whatever commercially reasonable
17 means are relevant or appropriate with respect to the facility and taking all facts and circumstances into
18 consideration and provided that the holder does not:

19 (i) outbid or refuse a bid for fair consideration for the property or outbid or refuse a bid that would
20 effectively compensate the holder for the amount secured by the facility;

21 (ii) worsen the contamination at the facility;

22 (iii) incur liability under subsection (1)(c) or (1)(d) by arranging for disposal of or transporting
23 hazardous or deleterious substances; or

24 (iv) engage in conduct described in subsection (11).

25 (11) The protection from liability provided in subsections (9) and (10) is not available to a fiduciary
26 or to a person holding indicia of ownership primarily to protect a security interest if the fiduciary or person
27 through affirmative conduct:

28 (a) causes or contributes to a release of hazardous or deleterious substances from the facility;

29 (b) allows others to cause or contribute to a release of hazardous or deleterious substances; or

30 (c) in the case of a person holding indicia of ownership primarily to protect a security interest,

1 actually participates in the management of a facility by:

2 (i) exercising decisionmaking control over environmental compliance; or

3 (ii) exercising control at a level comparable to that of a manager of the enterprise with
4 responsibility for day-to-day decisionmaking either with respect to environmental compliance or
5 substantially all of the operational, as opposed to financial or administrative, aspects of the facility."

6

7 **Section 89.** Section 75-10-720, MCA, is amended to read:

8 **"75-10-720. Condemnation -- creation of state lien.** (1) Whenever the department determines that
9 property upon which a release or threatened release of a hazardous or deleterious substance has occurred
10 may present an imminent and substantial endangerment to the public health, safety, or welfare or the
11 environment, the department may condemn the property for public use to mitigate the threat. The taking
12 of the property must be conducted in accordance with the procedure set forth in Title 70, chapter 30;
13 ~~parts 1 through 3.~~

14 (2) All costs, penalties, and natural resource damages for which a person has been judicially
15 determined to be liable to the state pursuant to 75-10-715 constitute a lien in favor of the state upon all
16 property and rights to the property that belong to the person.

17 (3) The lien imposed by this section arises at the time notice incorporating a description of the
18 property subject to the remedial action and an identification of the amount of costs, penalties, and natural
19 resource damages is filed with the clerk and recorder of the county in which the real property is located.
20 A copy of the notice must be served by certified mail upon the liable person.

21 (4) The costs, penalties, and natural resource damages constituting the lien may be recovered in
22 an action in the district court for the district in which the property is located or in which the remedial
23 action is occurring or has occurred. This section does not affect the right of the state to bring an action
24 against a person to recover all costs, penalties, and natural resource damages for which that person is
25 liable under this part or any other provision of state or federal law.

26 (5) The lien must continue until the liability for the costs and damages incurred as a result of the
27 release of a hazardous or deleterious substance is satisfied.

28 (6) If the department expends money from the fund for orphan share remedial action costs at a
29 facility or for a facility at which a reimbursed orphan share exists, the state has a lien upon the facility for
30 the unrecovered costs. The lien:

1 (a) may not exceed the increase in fair market value of the property attributable to the unfunded
2 portion of the remedial action at the time of a subsequent sale or other disposition of the property;

3 (b) arises at the time costs are first incurred by the department with respect to a remedial action
4 at the facility;

5 (c) must be filed according to subsection (3); and

6 (d) continues until the earlier of satisfaction of the lien or recovery of all remedial action costs
7 incurred at the facility.

8 (7) Payment of any liens under this section must be deposited in one of the two accounts from
9 which the remedial action costs originated, including the fund established in 75-10-704 or the orphan
10 share fund established in 75-10-743."

11

12 **Section 90.** Section 75-15-123, MCA, is amended to read:

13 **"75-15-123. Acquisition of outdoor advertising rights -- compensation.** (1) The department may
14 acquire by gift, purchase, agreement, exchange, or eminent domain existing outdoor advertising and
15 property rights pertaining to advertising that was lawfully in existence on June 24, 1971, and ~~which~~ that
16 by virtue of 75-15-111(1) is nonconforming. Eminent domain ~~shall~~ must be exercised in accordance with
17 ~~the laws of the state~~ Title 70, chapter 30.

18 (2) Just compensation ~~shall~~ must be paid for outdoor advertising and property rights pertaining
19 to the advertising acquired through the process of eminent domain. The department may remove outdoor
20 advertising found to be in violation of 75-15-112 or 75-15-132 without payment of compensation.

21 (3) Except as provided in 75-15-131 and 75-15-132, a sign may not be required to be removed
22 unless at the time of removal or discontinuance there are sufficient funds, from whatever source,
23 appropriated and immediately available to pay the just compensation required under this section and unless
24 at that time the federal funds required to be contributed under 23 U.S.C. 131(g), with respect to the
25 outdoor advertising being removed, have been apportioned and are immediately available to this state."

26

27 **Section 91.** Section 75-15-223, MCA, is amended to read:

28 **"75-15-223. Authority to acquire interest in land for screening and removal of junkyards, motor**
29 **vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills.** (1) When the
30 department of transportation determines that it is in the best interests of the state, it may acquire ~~such~~

1 ~~lands~~ land or ~~interests~~ interest in ~~lands as~~ land that may be necessary to provide adequate screening for
 2 junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary
 3 landfills.

4 (2) When the department of transportation determines that the topography of the land adjoining
 5 the highway will not permit adequate or economically feasible screening, it may acquire by gift, purchase,
 6 exchange, or condemnation ~~such interests~~ interest in ~~lands as~~ land that may be necessary to secure the
 7 relocation, removal, or disposal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities,
 8 garbage dumps, or sanitary landfills ~~which~~ that were either lawfully:

9 (a) in existence on October 22, 1965;

10 (b) along any highway made a part of the interstate or primary systems on or after October 22,
 11 1965, and before January 1, 1968; or

12 (c) established on or after January 1, 1968.

13 (3) The department of transportation shall pay just compensation to the owner for the relocation,
 14 removal, or disposal of any ~~such~~ facility. Condemnation must be exercised pursuant to Title 60, chapter
 15 4, and Title 70, chapter 30.

16 (4) Any new site chosen by the department of transportation pursuant to subsection (2) for the
 17 relocation of a garbage dump or sanitary landfill must be approvable as the site of a solid waste
 18 management system pursuant to Title 75, chapter 10, part 2, and the rules promulgated under authority
 19 of that part."

20

21 **Section 92.** Section 76-5-1108, MCA, is amended to read:

22 **"76-5-1108. Acquisition of property.** (1) Cities, towns, and counties may acquire by gift,
 23 purchase, or condemnation ~~and appropriation pursuant to Title 70, chapter 30,~~ private property within the
 24 limits of the project; ~~including the right to cross railroad right-of-way and property and highway~~
 25 ~~right-of-way and property, so as not to impair the previous public use, as~~ that may be necessary to carry
 26 into effect the provisions of this part and to provide an outlet for the watercourses, either natural or
 27 artificial; ~~which~~ Watercourses may be deepened, widened, straightened, altered, changed, diverted, or
 28 otherwise improved under the provisions of this part. Property rights that may be acquired include the
 29 right to cross railroad right-of-way and property and highway right-of-way and property so as not to impair
 30 the previous public use.

1 (2) All applicable provisions of ~~the laws of Montana relating to the condemnation of lands for~~
 2 ~~public purposes shall~~ Title 70, chapter 30, apply to ~~the provisions thereof insofar as~~ the condemnation of
 3 property under this section ~~applicable.~~"

4

5 **Section 93.** Section 76-5-1111, MCA, is amended to read:

6 **"76-5-1111. Apportionment of costs.** (1) The cost of all right-of-way acquired by purchase or
 7 condemnation pursuant to Title 70, chapter 30, together with any other property rights ~~which that~~ may
 8 be required in furtherance of ~~such~~ projects under this part, may be borne by the city, town, or county.

9 (2) The work of actual construction and the cost ~~thereof~~ of construction may be borne by the
 10 federal government."

11

12 **Section 94.** Section 76-6-105, MCA, is amended to read:

13 **"76-6-105. Construction of chapter.** (1) To the extent that the provisions of this chapter are
 14 inconsistent with the provisions of any other law, the provisions of this chapter are controlling. The powers
 15 conferred by this chapter are in addition and supplemental to the powers conferred by any other law.

16 (2) This chapter may not be construed to imply that any easement, covenant, condition, or
 17 restriction that does not have the benefit of this chapter is not enforceable based on any provisions of this
 18 chapter. This chapter does not diminish the powers granted by any general or special law to acquire by
 19 purchase, gift, eminent domain pursuant to Title 70, chapter 30, or otherwise and to use land for public
 20 purposes."

21

22 **Section 95.** Section 76-12-108, MCA, is amended to read:

23 **"76-12-108. Acquisition of lands.** Subject to the limits of available appropriations, the board is
 24 authorized to acquire interests ~~to lands in land~~ by any lawful means for the purpose of designating natural
 25 areas, ~~provided that the~~ The board shall may exercise the power of eminent domain, provided for in Title
 26 70, chapter 30, only in specific instances ~~where~~ authorized by the legislature."

27

28 **Section 96.** Section 76-12-110, MCA, is amended to read:

29 **"76-12-110. Restriction on condemnation or development of natural areas.** Natural areas acquired
 30 or designated in accordance with the provisions of this part are protected from condemnation or other

1 development adversely affecting the integrity of the natural area until legislative action is taken specifically
 2 authorizing the ~~condemnation or development~~ or condemnation, as provided in Title 70, chapter 30."

3

4 **Section 97.** Section 82-2-221, MCA, is amended to read:

5 **"82-2-221. Eminent domain for open-pit mining -- purchase of property required.** (1) (a) ~~Whenever~~
 6 Subject to subsection (1)(b), when the right of eminent domain is exercised pursuant to Title 70, chapter
 7 30, to acquire estates and rights in land for the purpose of open-pit mining of the ores, metals, or minerals
 8 owned by the ~~plaintiff~~ condemnor, the decree ~~shall~~ must be granted on the condition that the ~~plaintiff~~
 9 condemnor protects the public in the immediate area by agreeing to purchase all property within 300 yards
 10 of the surface tract condemned, including vacant lots;

11 ~~(b) provided~~ In order to fall within the protection provided by subsection (1)(a), the owner or
 12 owners thereof of land within 300 yards of the surface tract condemned shall serve upon the ~~plaintiff~~
 13 condemnor and file with the court a written offer stating the amount asked for ~~such the~~ property within
 14 30 days from the entry of the court order appointing commissioners in ~~said the~~ eminent domain
 15 proceeding. ~~In the event the plaintiff~~

16 ~~(2) If the condemnor and the an owner or owners~~ are unable to agree upon the compensation to
 17 be paid for ~~such the~~ property, the court, upon petition of either party, may proceed to determine the
 18 compensation to be paid for ~~such~~ property in the manner prescribed in Title 70, chapters 30 and 31, ~~as~~
 19 ~~amended,~~ for ascertaining the value of property taken through the exercise of the right of eminent
 20 domain."

21

22 **Section 98.** Section 82-2-222, MCA, is amended to read:

23 **"82-2-222. Construction of alternate facilities.** ~~Whenever it is sought~~ If a mineral owner seeks to
 24 condemn streets, roads, alleys, or highways pursuant to Title 70, chapter 30, for the purposes stated in
 25 82-2-221 ~~hereof,~~ there ~~shall~~ must also be attached to the complaint for condemnation a plat or plats
 26 showing the alternate facilities to be proposed and paid for by the ~~plaintiff, condemnor, and the~~ The court,
 27 in its final order of condemnation, may order the ~~plaintiff~~ condemnor to construct ~~such~~ reasonable and
 28 adequate alternate facilities ~~as that it deems~~ considers appropriate under the circumstances."

29

30 **Section 99.** Section 82-2-224, MCA, is amended to read:

1 **"82-2-224. Notice of condemnation -- filing of plat.** Any party seeking to condemn property for
 2 open-pit mining purposes pursuant to Title 70, chapter 30, shall serve written notice ~~in writing~~ on all
 3 owners and purchasers under contracts for deed of property within 300 yards of the surface tract sought
 4 to be condemned or ~~in lieu thereof~~ shall file a plat showing the boundaries of the property sought to be
 5 condemned in the office of the county clerk and recorder, ~~and the~~ The filing of ~~said the~~ the plat shall
 6 ~~constitute~~ constitutes notice to the owner or owners not personally served with written notice ~~as herein~~
 7 ~~provided.~~"

8

9 **Section 100.** Section 82-10-303, MCA, is amended to read:

10 **"82-10-303. Use of eminent domain to acquire underground reservoirs.** (1) A natural gas public
 11 utility may acquire, through the exercise of the right of eminent domain as provided in Title 70, chapter
 12 30, and this part, an underground reservoir for its use for the underground storage of natural gas, ~~an~~
 13 ~~underground reservoir which~~ The right of eminent domain may be exercised only if the board finds that
 14 the reservoir is suitable and its taking is in the public interest for the underground storage of natural gas, ~~and~~
 15 ~~and in~~ In connection with the underground reservoir, the utility may acquire ~~such~~ other interests in property
 16 ~~as that~~ may be required to adequately ~~to~~ maintain and operate the underground reservoir facilities. The
 17 acquisition by the exercise of the right of eminent domain of underground reservoirs granted by this
 18 section is limited as follows:

19 (a) ~~No sand~~ Sand, a formation, or a stratum ~~which that~~ is producing, ~~or that~~ has produced, or
 20 ~~which that~~ is capable of producing oil is not subject to ~~appropriation~~ taking under this section.

21 (b) ~~No~~ A gas-bearing sand, formation, or stratum is not subject to ~~appropriation~~ taking under this
 22 section, unless the recoverable volumes of native gas ~~therein~~ in the interest sought to be taken have all
 23 been produced or unless the sand, formation, or stratum has a greater value or utility as an underground
 24 reservoir for the purpose of ~~insuring~~ ensuring an adequate supply of natural gas for domestic, commercial,
 25 or industrial consumers of natural gas or for the conservation of natural gas than for the production of the
 26 remaining relatively small volumes of native gas as compared with the original volumes of natural gas
 27 ~~therein~~ in the sand, formation, or stratum. Gas, sand, formation, or stratum may not be acquired under
 28 this part when the gas in the underground reservoir is being used for the secondary recovery of oil, unless
 29 gas in necessary and required amounts is furnished to the operator of the secondary recovery operations
 30 for as long as oil is produced in paying quantities in the secondary operations for the recovery of oil at the

1 same cost as the cost to the operator at the time of acquisition of the gas being used in the secondary
 2 operations, ~~not exceeding, however~~ However, the amount of gas furnished may not exceed the quantity
 3 of the appropriated gas that remained recoverable from the sand, formation, or stratum at the time of its
 4 acquisition, taking if the operator was at that time entitled to ~~the whole thereof~~ all of the gas or if ~~the~~
 5 ~~operator was at that time~~ entitled to less than all of the whole thereof gas, then an amount not to exceed
 6 the quantity ~~thereof~~ of gas to which the operator was ~~then~~ entitled.

7 (c) Only the area of the underground sand, formation, or stratum ~~as that~~ that may reasonably be
 8 expected to be penetrated by gas displaced or injected into the underground ~~gas storage~~ reservoir may be
 9 ~~appropriated~~ taken.

10 (d) ~~No rights~~ Rights or interests in existing underground ~~gas~~ reservoirs being used for the injection,
 11 storage, or withdrawal of natural gas owned or operated by a natural gas public utility other than the
 12 natural gas public utility seeking to acquire the ~~same~~ reservoir are not subject to appropriation.

13 (2) The exercise of the right of eminent domain granted by this section ~~shall be~~ is without
 14 prejudice to the rights of the owner of the ~~lands~~ land or of other rights or interests ~~therein~~ in the land to
 15 drill or bore into or through the underground reservoir ~~so appropriated~~ in a manner that complies with
 16 orders and rules of the board issued for the purpose of protecting the underground reservoir against
 17 pollution and against the escape of natural gas ~~therefrom~~ and ~~shall be~~ is without prejudice to the rights
 18 of the owner of the ~~lands~~ land or other rights or interests ~~therein~~ in the land as to all other uses ~~thereof~~
 19 of the land. The additional cost of complying with those rules or orders in order to protect the ~~storage~~
 20 reservoir ~~shall~~ must be paid by the natural gas public utility."

21

22 **Section 101.** Section 82-10-304, MCA, is amended to read:

23 **"82-10-304. Certificate of board required prior to use of eminent domain.** (1) A natural gas public
 24 utility desiring to exercise the right of eminent domain pursuant to Title 70, chapter 30, and this chapter
 25 ~~as to any property~~ for taking property to use for underground storage of natural gas shall, as a condition
 26 precedent to the filing of its complaint in the district court, apply for and obtain ~~from the board~~
 27 from the board. The certificate must contain ~~setting out~~ the following findings of the board:

28 (a) that the underground sand, stratum, or formation sought to be ~~acquired~~ taken is suitable for
 29 an underground reservoir for the storage of natural gas and that its use for ~~such purposes~~ that purpose
 30 is in the public interest;

1 (b) the amount of native gas, if any, remaining ~~therein in the reservoir~~ and the portion ~~thereof of~~
2 gas recoverable; and

3 (c) that the applicant has in good faith sought to acquire the rights sought under this part.

4 (2) The board may not issue the certificate until after a public hearing is ~~had~~ held on the
5 application, pursuant to notice given to all persons known to have an interest in the property proposed to
6 be acquired in the manner provided by the laws of the state for service of process in a civil action."

7

8 **Section 102.** Section 82-10-305, MCA, is amended to read:

9 **"82-10-305. Proceedings.** ~~Having first obtained~~ After obtaining a certificate from the board, a
10 natural gas public utility desiring to exercise the right of eminent domain for the purpose of acquiring
11 property for the underground storage of natural gas shall ~~do so in the manner~~ proceed as provided in this
12 section. The natural gas public utility shall present to the district court of the county ~~wherein in which~~
13 land is situated a complaint setting forth the purpose for which the property is sought to be ~~acquired~~
14 taken, a description of the property sought to be ~~appropriated~~ taken, and the names of the owners ~~thereof~~
15 of the property as shown by the records of the county. The ~~plaintiff~~ utility shall file the certificate of the
16 board as a part of its complaint, and ~~no an~~ order by the court granting the complaint ~~shall~~ may not be
17 entered without the certificate being filed ~~therewith~~ with the complaint. Subsequent proceedings ~~shall~~ must
18 follow the procedure provided by ~~law in the exercise of the rights of eminent domain~~, Title 70, ~~chapters~~
19 chapter 30 and 31."

20

21 **Section 103.** Section 85-1-204, MCA, is amended to read:

22 **"85-1-204. Department powers over state water.** (1) The department may sell, lease, and
23 otherwise dispose of water impounded under this chapter. The water may be sold for the purpose of
24 irrigation, development of power, watering of stock, or other purposes. The department may also lease
25 water under the state water leasing program established under the provisions of 85-2-141. To the extent
26 that it may be necessary to carry out this chapter and subject to compliance with the other provisions of
27 this chapter, the department has full control of all the water of the state not under the exclusive control
28 of the United States and not ~~vested in~~ appropriated for private ownership, use, and it The department shall
29 take the necessary actions to appropriate and conserve the water for the use of the people. The authority
30 of the department conferred by this chapter extends and applies to rights to the natural flow of the water

1 of this state that it may acquire by condemnation pursuant to Title 70, chapter 30, or by purchase,
2 exchange, appropriation, or agreement.

3 (2) For the purpose of regulating the diversion of water, the department may enter upon the
4 means and place of use of all appropriators for making surveys of respective rights and seasonal needs.

5 (3) The department may take into consideration the decrees of the courts of this state having
6 jurisdiction that purport to adjudicate the water of a stream or its tributaries. A fair, reasonable, and
7 equitable reconciliation must be made between the claimants asserting rights under different decrees and
8 between decreed rights and asserted rights of appropriation not adjudicated by a court.

9 (4) The department may hold hearings relating to the rights of respective claimants after first
10 giving the notice that it considers appropriate. The department shall make findings of the date and quantity
11 of appropriation and use of all claimants that the department recognizes and observes in diverting the
12 water that the department ~~owns~~ is appropriated. The department may measure and distribute the water
13 to the ~~owner~~ holder of the recognized appropriation right under agreed-upon terms.

14 (5) The department, when engaged in controlling and dividing the natural flow of a stream under
15 the authority granted by this chapter, is exercising a police power of the state, and water commissioners
16 appointed by any court may not deprive the department of any of the water ~~owned~~ appropriated or
17 administered under agreement with respective ~~owners~~ water right holders. The ~~owner~~ holder of a prior
18 right who contends that the department is not recognizing and respecting the appropriation may resort to
19 a court for the purpose of determining whether or not the rights of the claimant have been invaded, and
20 the department shall observe the terms of the final decree.

21 (6) When the department impounds or acquires the right of appropriation of the water of a stream,
22 it may divert or authorize the diversion at a point on the stream or a portion of the stream when it is done
23 without injury to a prior appropriator."
24

25 **Section 104.** Section 85-1-209, MCA, is amended to read:

26 **"85-1-209. Acquisition of property by department.** (1) The department may acquire by purchase
27 or exchange, upon terms and conditions and in a manner it considers proper, and may acquire by
28 condemnation, in accordance with ~~laws applicable to the condemnation of property for public use~~ Title 70,
29 chapter 30, any land, rights, water rights, easements, franchises, and other property considered necessary
30 for the construction, operation, and maintenance of works. Title to property purchased or condemned must

1 be taken in the name of the department. The department is under no obligation to accept and pay for any
2 property condemned under this chapter except from the funds provided by this chapter. In any proceedings
3 to condemn, orders may be made by the court that has jurisdiction of the suit, action, or proceeding ~~as~~
4 that may be warranted by law and the facts.

5 (2) In a condemnation proceeding brought under ~~the powers of eminent domain~~ Title 70, chapter
6 30, for the purpose of carrying out this chapter, all persons interested in the title of or holding liens upon
7 the property sought to be ~~acquired~~ taken, as disclosed by the public records, must be made parties and
8 the court in the action shall partition and distribute the damages awarded, if any, among those persons
9 ~~as their rights appear~~. If there is controversy between ~~them~~ the condemnees, the court may direct the
10 amount of the damage awarded to be paid into court to ~~abide the result of~~ be allocated in further
11 appropriate proceedings either at law or in equity.

12 (3) Taking possession of the property sought to be condemned may not be delayed by reason of
13 any dispute between the rival claimants or the failure to join any of them as a party to the condemnation
14 proceedings ~~in condemnation~~.

15 (4) If water rights are acquired or exercised by the department in connection with two or more
16 works or projects, the department by order shall apportion or allocate to each of the works or projects the
17 part of the water rights that the department determines is necessary. Upon the adoption of the order, the
18 water rights are considered a part of each of the works or projects to the extent that the water rights have
19 been apportioned or allocated to the works or projects."

20

21 **Section 105.** Section 85-7-1411, MCA, is amended to read:

22 **"85-7-1411. Authority to acquire, construct, maintain, operate, and lease various undertakings.**

23 (1) An irrigation district may:

24 (a) construct, acquire by gift, purchase, or lease, or improve any undertaking, within or outside
25 the irrigation district, and acquire by gift, purchase, or lease land or rights in land or water rights in
26 connection with the undertaking;

27 (b) operate and maintain or enter into a contract for the operation and maintenance of any
28 undertaking and furnish or enter into a contract for the furnishing of services, facilities, and commodities
29 of the undertaking for its own use and for the use of public and private consumers within or outside the
30 territorial boundaries of the irrigation district. However, an irrigation district may not furnish or enter into

1 a contract for the furnishing of electrical energy or capacity except to a qualified purchaser under the
2 Public Utility Regulatory Policy Act of 1978.

3 (c) lease any undertaking to a private or governmental entity.

4 (2) ~~Nothing in this~~ This section may not be construed to permit an irrigation district to condemn
5 any property owned or controlled by a rural electric cooperative or a utility, whether publicly or privately
6 owned. An irrigation district is expressly prohibited from condemning, pursuant to Title 70, chapter 30,
7 such property owned or controlled by a rural electric cooperative or utility."

8

9 **Section 106.** Section 85-7-1904, MCA, is amended to read:

10 **"85-7-1904. Acquisition of water and waterworks by board.** (1) The board ~~shall have power and~~
11 ~~authority to~~ may:

12 (a) appropriate water in the name of the district;

13 (b) acquire, by purchase, lease, or contract;

14 (i) water and water rights;

15 (ii) additional ~~waters~~ water and supplies of water; and

16 (iii) canals, reservoirs, dams, and other works already constructed or in the course of construction;

17 and

18 (c) acquire by purchase, lease, contract, condemnation pursuant to Title 70, chapter 30, or other
19 legal means:

20 (i) ~~lands~~ land and rights in lands for rights-of-way, for reservoirs, for the storage of ~~needed~~ waters,
21 and for dam sites and necessary appurtenances; and

22 (ii) other lands and property ~~as~~ that may be necessary for the construction, use, maintenance,
23 repair, improvement, enlargement, and operation of any district or subdistrict system of irrigation works.

24 (2) The board may contract with the owner or owners of canals, reservoirs, dams, and other
25 works purchased and in the course of construction for the completion ~~thereof~~ of the works.

26 (3) A purchase, lease, or contract for purchase of any water, water rights, canals, reservoirs,
27 reservoir sites, dam sites, irrigation works, or other property of any nature or kind or for the making or
28 purchasing of surveys, maps, plans, estimates, and specifications or for the purchase of machinery for
29 pumping plants or for the erection of buildings, aqueducts, and other structures necessarily used in
30 connection with ~~such~~ the pumping plants, for a price or rental in excess of \$150,000 or 25% of the

1 district's annual operation and maintenance budget, whichever is greater, may not be entered into by the
 2 district without the written consent or petition of at least a majority in number and acreage of the holders
 3 of title or evidence of title to the lands within the district or, if the purchase, lease, or contract
 4 substantially benefits a subdistrict in the district, by a majority in number and acreage of the holders of
 5 title or evidence of title to lands within the subdistrict. Any splitting or division of a purchase, lease, or
 6 contract with the purpose or intention of avoiding or circumventing the provisions of this section renders
 7 the divided or split contract or contracts void."

8

9 **Section 107.** Section 85-7-1932, MCA, is amended to read:

10 **"85-7-1932. Noninterference with navigation or water rights.** Navigation ~~shall never in anywise~~
 11 may not be impeded by the operation of this chapter, ~~nor shall any~~ A vested interest in or to any mining
 12 or agricultural water rights or ditches or in or to any water rights, reservoirs, or dams now used beneficially
 13 ~~by the owners or possessors thereof~~ in connection with any mining or agricultural industry or by persons
 14 purchasing or renting the use ~~thereof~~ of the interest or in or to any other property ~~now~~ used, directly or
 15 indirectly, in carrying on or in promoting the mining or agricultural industry ~~ever~~ may not be affected by
 16 or taken under ~~its provisions~~ this chapter, ~~save and~~ except that rights-of-way may be acquired over the
 17 ~~same~~ mining or agricultural property or interest. The right of eminent domain, as provided in Title 70,
 18 chapter 30, is ~~shall not be~~ otherwise ~~considered abridged~~ affected by the provisions ~~hereof~~ of this
 19 section."

20

21 **Section 108.** Section 85-9-410, MCA, is amended to read:

22 **"85-9-410. Condemnation authorized.** The district may exercise the right of eminent domain, ~~in~~
 23 the manner as provided by the law to take private property for public use, ~~with just compensation in Title~~
 24 70, chapter 30, where when the taking is necessary for the purposes of the district. Water rights ~~as such~~
 25 ~~shall are~~ not be subject to ~~such~~ taking but may be taken as an incident to the condemnation of land to
 26 which ~~such~~ the water rights are appurtenant, ~~where~~ when the taking of the land is the principal purpose
 27 of the condemnation."

28

29 **Section 109.** Section 87-1-209, MCA, is amended to read:

30 **"87-1-209. Acquisition and sale of lands or waters.** (1) The department, with the consent of the

1 commission and, in the case of land acquisition involving more than 100 acres or \$100,000 in value, the
2 approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise
3 and may acquire easements upon lands or waters for the purposes listed in this subsection. The
4 department may develop, operate, and maintain acquired lands or waters:

5 (a) for fish hatcheries, nursery ponds, or ~~game farms~~ alternative livestock ranches;

6 (b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation,
7 or protection;

8 (c) for public hunting, fishing, or trapping areas;

9 (d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or
10 fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of
11 undesirable species;

12 (e) for state parks and outdoor recreation;

13 (f) to extend and consolidate by exchange, lands or waters suitable for these purposes.

14 (2) The department, with the consent of the commission, may acquire by condemnation, as
15 provided in Title 70, chapter 30, lands or structures for the preservation of historical or archaeological sites
16 that are threatened with destruction or alteration.

17 (3) (a) The department, with the consent of the commission, may dispose of lands and ~~waters~~
18 water rights acquired by it on those terms after public notice as required by subsection (3)(b), without
19 regard to other laws that provide for sale or disposal of state lands and with or without reservation, as it
20 considers necessary and advisable. The department, with the consent of the commission, may convey
21 department lands and ~~waters~~ water rights for full market value to other governmental entities without
22 regard to the requirements of subsection (3)(b) or (3)(c) if the land is less than 10 acres or if the full
23 market value of the interest to be conveyed is less than \$20,000. When the department conveys land or
24 water rights to another governmental entity pursuant to this subsection, the department, in addition to
25 giving notice pursuant to subsection (3)(b), shall give notice by mail to the landowners whose property
26 adjoins the department property being conveyed.

27 (b) Notice of sale describing the lands or waters to be disposed of must be published once a week
28 for 3 successive weeks in a newspaper with general circulation printed and published in the county where
29 the lands or waters are situated or, if a newspaper is not published in that county, then in any newspaper
30 with general circulation in that county.

1 (c) The notice must advertise for cash bids to be presented to the director within 60 days from
2 the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in
3 an amount equal to 10% of the amount bid. The highest bid must be accepted upon payment of the
4 balance due within 10 days after mailing notice by certified mail to the highest bidder. If that bidder
5 defaults on payment of the balance due, then the next highest bidders must be similarly notified in
6 succession until a sale is completed. Deposits must be returned to the unsuccessful bidders except bidders
7 defaulting after notification.

8 (d) The department shall reserve the right to reject any bids that do not equal or exceed the full
9 market value of the lands and waters as determined by the department. If the department does not receive
10 a bid that equals or exceeds fair market value, it may then sell the lands or ~~waters~~ water rights at private
11 sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process.

12 (4) The department shall convey lands and ~~waters~~ water rights without covenants of warranty
13 by deed executed by the governor or in the governor's absence or disability by the lieutenant governor,
14 attested by the secretary of state and further countersigned by the director.

15 (5) The department, with the consent of the commission, is authorized to utilize the installment
16 contract method to facilitate the acquisition of wildlife management areas in which game and nongame
17 fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access
18 to fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases
19 authorized by the department and appropriated by the legislature.

20 (6) The department is authorized to enter into leases of land under its control in exchange for
21 services to be provided by the lessee on the leased land."

22 - END -