

HOUSE BILL NO. 658  
INTRODUCED BY T. DOWELL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE DISPUTABLE PRESUMPTION FOR A HIGHWAY OR IMPROVEMENT CREATED BY AN ORDER OF THE DEPARTMENT OF TRANSPORTATION DOES NOT APPLY IF THE LANDOWNER FILES A WRITTEN REPORT BY A LICENSED MONTANA ENGINEER CONTAINING CONTRARY FINDINGS; AMENDING SECTION 60-4-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

**Section 1.** Section 60-4-104, MCA, is amended to read:

**"60-4-104. Exercise of right of eminent domain -- presumption.** (1) Whenever the department cannot acquire lands or other property or interests in the lands or property at a price or cost ~~which~~ that it considers reasonable, it may direct the attorney general or any county attorney to procure the interests by proceedings to be instituted as provided in Title 70, chapter 30, against all nonaccepting landholders.

(2) ~~It shall~~ The department may not ~~so~~ direct the attorney general or any county attorney to commence eminent domain proceedings until it adopts an order declaring that:

(a) public interest and necessity require the construction or completion by the state of the highway or improvement for one of the purposes set forth in 60-4-103;

(b) the interest described in the order and sought to be condemned is necessary for the highway or improvement;

(c) the highway or improvement is planned and located in a manner ~~which~~ that will be compatible with the greatest public good and the least private injury.

(3) ~~The~~ Subject to subsection (4), the order creates and establishes a disputable presumption:

(a) of the public necessity of the proposed highway or improvement;

(b) that the taking of the interest sought is necessary ~~therefor~~ for the proposed highway or improvement;

(c) that the proposed highway or improvement is planned or located in a manner ~~which~~ that will be most compatible with the greatest public good and the least private injury.

(4) If the landowner, within 60 days of filing an answer and before any entry of an order determining necessity, files a written report by a licensed Montana engineer that states that the proposed highway or

improvement is not planned or located in a manner that will be most compatible with the greatest public good and the least private injury, then the condemnor is not entitled to a disputable presumption at any hearing on necessity. At the hearing on necessity, the condemnor has the burden of proof to establish by a preponderance of the evidence:

(a) that the proposed highway or improvement is planned or located in a manner that will be most compatible with the greatest public good and the least private injury;

(b) the public necessity of the proposed highway or improvement; and

(c) that the taking of the interest sought is necessary for the proposed highway or improvement."

NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 3. Applicability. [This act] applies to proceedings for condemnation commenced on or after [the effective date of this act].

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