

SENATE BILL NO. 34
INTRODUCED BY BARKUS
BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO IMPLEMENT AN EXPEDITED ACQUISITION PROCESS FOR ACQUIRING PROPERTY UNDER CERTAIN CONDITIONS; AMENDING SECTIONS 60-4-104, 70-30-302, AND 70-30-311, 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) Subject to subsections (4) and (5), whenever ~~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 procure the interests 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 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 project;

(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) (a) Once the department has acquired at least ~~two-thirds~~ THREE-FOURTHS of all the parcels needed

to construct a project that has been selected by the commission, it may use the procedures outlined in subsection (5) and this subsection (4) to acquire the remaining parcels required for the project.

(b) Not less than 30 days or more than 45 days after service of the summons and complaint provided for in 70-30-203, the department shall deposit into an account and in the manner provided for in 70-30-302 the estimated fair market value of the property that is to be acquired and that is described in the complaint. Once the funds are deposited, the department may request, by motion filed with the court, ~~the entry of an order placing the condemnor in possession as provided in 70-30-311~~ AN ORDER TO SHOW CAUSE WHY THE PROPERTY SHOULD NOT BE CONDEMNED AS REQUESTED IN THE COMPLAINT.

(5) (A) IF THE CONDEMNEE DOES NOT FILE AN OBJECTION TO THE MOTION WITHIN 10 DAYS, THE COURT SHALL ISSUE THE PRELIMINARY CONDEMNATION ORDER AS PROVIDED IN 70-30-206 AND PLACE THE CONDEMNOR IN POSSESSION OF THE PROPERTY AS PROVIDED IN 70-30-311.

~~(5) (a)(B) If the condemnee files an objection to the motion for an order placing the condemnor in possession, the court shall set a date for~~ SCHEDULE a hearing on the motion. The hearing must take place not less than 10 days or more than 20 days after the objection is filed. The court shall rule on the condemnor's motion as soon after the hearing as possible. However, the time between the hearing and the court's decision may not exceed 30 days.

~~(b) If the condemnee does not file an objection to the motion for an order placing the condemnor in possession, the court shall issue the preliminary condemnation order and place the condemnor in possession of the property as provided in 70-30-311.~~

(C) THE MOTION SHALL INCLUDE A NOTICE SPECIFYING THAT THE ORDER SOUGHT IS A FINAL ORDER ON THE ISSUE OF POSSESSION OF THE PROPERTY DESCRIBED IN THE COMPLAINT."

Section 2. Section 70-30-302, MCA, is amended to read:

"70-30-302. Assessing compensation -- date and measure -- interest. (1) For the purpose of assessing compensation, the right to compensation is considered to have accrued at the date of the service of the summons, and the property's current fair market value as of that date is the measure of compensation for all property to be actually taken and the basis of depreciation in the current fair market value of property not actually taken but injuriously affected. This subsection may not be construed to limit the amount of compensation payable by the department of transportation under the provisions of any legislation enacted pursuant to the federal Highway Beautification Act of 1965.

(2) If an order is made allowing the condemnor to take possession, as provided in 60-4-104(4) and (5)

and 70-30-311, the full amount finally awarded must draw interest at the rate of 10% a year from the date of the service of the summons to the earlier of the following dates:

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

(b) the date on which the condemnee withdraws from the court the full amount finally awarded.

(3) If the condemnee withdraws from the court a fraction of the amount finally awarded, interest on that fraction ceases on the date it is withdrawn but interest on the remainder of the amount finally awarded continues to the earlier of the dates referred to in subsections (2)(a) and (2)(b) until the full amount is withdrawn from the court.

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

(5) Improvements put upon the property subsequent to the date of the service of summons may not be included in the assessment of compensation or depreciation in current fair market value and may not be used as the basis of computing compensation or depreciation."

Section 3. Section 70-30-311, MCA, is amended to read:

"70-30-311. Putting condemnor in possession. (1) At any time after the filing of the preliminary condemnation order ~~PURSUANT TO 70-30-206 or an order placing the department of transportation in possession, as provided in 60-4-104(4) and (5);~~ and while it retains jurisdiction, the court upon application of the condemnor may make an order that;

(a) upon payment into court of the amount of compensation claimed by the condemnee in the condemnee's statement of claim of just compensation under 70-30-207 or the amount assessed either by the commissioners or by the jury, the condemnor is authorized:

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

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

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

(2) If the condemnee fails to file a statement of claim of just compensation within the time specified in 70-30-207, the condemnor may obtain an order for possession provided for in subsection (1), subject to the

condition subsequent that a condemnor's payment into court must be made within 10 days of receipt of the condemnee's statement of claim.

(3) However, when an appeal is taken by the condemnee, the court may require the condemnor before continuing or taking possession, in addition to paying into court the amount assessed, to give a bond or undertaking with sufficient sureties approved by the court and in an amount that the court may direct, conditioned to pay the condemnee any additional damages and costs above the amount assessed, which is finally determined as the amount that the condemnee is entitled to for the taking of the property, and all damages that the condemnee may sustain if for any cause the property is not finally taken for public use.

(4) The amount assessed by the commissioners or by the jury on appeal is considered, for the purposes of this section and until reassessed or changed in the further proceedings, as just compensation for the property taken. However, the condemnor, by payment into court of the amount claimed in the answer or the amount assessed or by giving security as provided in subsection (3), may not be prevented from appealing from the assessment but may appeal in the same manner and with the same effect as if money had not been deposited or security had not been given.

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

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

NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

NEW SECTION. **Section 5. Applicability.** [This act] applies to actions initiated on or after [the effective date of this act].

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