

SENATE BILL NO. 238
INTRODUCED BY D. WANZENRIED

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A PRIVATE HISTORIC ACCESS RIGHT-OF-WAY IS A PUBLIC USE FOR PURPOSES OF EMINENT DOMAIN; PROVIDING CRITERIA FOR SEEKING A PRIVATE HISTORIC ACCESS RIGHT-OF-WAY; PROVIDING THAT THE LIMITED USE OF THE PRIVATE HISTORIC ACCESS RIGHT-OF-WAY MUST BE TAKEN INTO ACCOUNT IN ESTABLISHING COMPENSATION; PROVIDING THAT THE PURPOSE OF THE CONDEMNATION MUST BE LIMITED TO THE HISTORIC USE ESTABLISHED BY THE EVIDENCE; AND AMENDING SECTIONS 70-30-102, 70-30-107, 70-30-302, AND 70-30-309, MCA."

WHEREAS, increased rural development in the state and a proliferation of out-of-state landowners have caused many long-time residents to be deprived of legal access to their property, although there has been historical access across other private property, and their property is not marketable as a result; and

WHEREAS, under current law, such owners cannot condemn and pay for a private road unless it leads from highways to residences or farms, regardless of the value of the access and regardless of the amount that the landlocked owner offers to pay.

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

Section 1. Section 70-30-102, MCA, is amended to read:

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

- (1) all public uses authorized by the government of the United States;
- (2) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;
- (3) public buildings and grounds for the use of any county, city, town, or school district;
- (4) canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town;
- (5) projects to raise the banks of streams, remove obstructions from streambanks, and widen, deepen, or straighten stream channels;

- (6) water and water supply systems as provided in Title 7, chapter 13, part 44;
- (7) roads, streets, alleys, controlled-access facilities, and all other public uses for the benefit of a county, city, or town or the inhabitants of a county, city, or town;
- (8) acquisition of road-building material as provided in 7-14-2123;
- (9) stock lanes as provided in 7-14-2621;
- (10) parking areas as provided in 7-14-4501 and 7-14-4622;
- (11) airport purposes as provided in 7-14-4801, 67-2-301, 67-7-210, and Title 67, chapters 10 and 11;
- (12) urban renewal projects as provided in Title 7, chapter 15, parts 42 and 43;
- (13) housing authority purposes as provided in Title 7, chapter 15, part 44;
- (14) county recreational and cultural purposes as provided in 7-16-2105;
- (15) city or town athletic fields and civic stadiums as provided in 7-16-4106;
- (16) county cemetery purposes as provided in 7-35-2201, cemetery association purposes as provided in 35-20-104, and state veterans' cemetery purposes as provided in 10-2-604;
- (17) preservation of historical or archaeological sites as provided in 23-1-102 and 87-1-209(2);
- (18) public assistance purposes as provided in 53-2-201;
- (19) highway purposes as provided in 60-4-103 and 60-4-104;
- (20) common carrier pipelines as provided in 69-13-104;
- (21) water supply, water transportation, and water treatment systems as provided in 75-6-313;
- (22) mitigation of the release or threatened release of a hazardous or deleterious substance as provided in 75-10-720;
- (23) the acquisition of nonconforming outdoor advertising as provided in 75-15-123;
- (24) screening for or the relocation or removal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills as provided in 75-15-223;
- (25) water conservation and flood control projects as provided in 76-5-1108;
- (26) acquisition of natural areas as provided in 76-12-108;
- (27) acquisition of water rights for the natural flow of water as provided in 85-1-204;
- (28) property and water rights necessary for waterworks as provided in 85-1-209 and 85-7-1904;
- (29) conservancy district purposes as provided in 85-9-410;
- (30) wharves, docks, piers, chutes, booms, ferries, bridges, private roads, private historic access rights-of-way, plank and turnpike roads, and railroads;
- (31) canals, ditches, flumes, aqueducts, and pipes for:

(a) supplying mines, mills, and smelters for the reduction of ores;

(b) supplying farming neighborhoods with water and drainage;

(c) reclaiming lands; and

(d) floating logs and lumber on streams that are not navigable;

(32) sites for reservoirs necessary for collecting and storing water. However, reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(33) roads, tunnels, and dumping places for working mines, mills, or smelters for the reduction of ores;

(34) outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills, and smelters for the reduction of ores;

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

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

(37) telephone or electrical energy lines;

(38) telegraph lines;

(39) sewerage of any:

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

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

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

(40) tramway lines;

(41) logging railways;

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

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

(44) projects to mine and extract ores, metals, or minerals owned by the condemnor located beneath or upon the surface of property where the title to the surface vests in others. However, the use of the surface of property for strip mining or open-pit mining of coal (i.e., any mining method or process in which the strata or

overburden is removed or displaced in order to extract the coal) is not a public use, and eminent domain may not be exercised for this purpose.

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

Section 2. Section 70-30-107, MCA, is amended to read:

"70-30-107. Private roads -- private historic access right-of-way. (1) Private roads may be opened in the manner prescribed by this chapter, but in ~~every~~ each case, the necessity of the road and the amount of all damage to be sustained by the opening of the road must be first determined by a jury, and the amount of damages, together with the expenses of the proceeding, must be paid by the person to be benefited.

(2) A private historic access right-of-way may be obtained in the manner prescribed in this chapter if the following conditions are met:

(a) the right-of-way must be used to access land owned by the condemnor; and

(b) the petition must be accompanied by:

(i) a description of the historic use;

(ii) the approximate duration of the historic use;

(iii) a statement that there is no other reasonable access to the condemnor's property; and

(iv) sworn statements from three individuals verifying the historic use of the right-of-way."

Section 3. 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. For the purpose of establishing compensation for a private historic access right-of-way described in 70-30-107, the limited use of the right-of-way must be taken into account.

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

"70-30-309. Final order of condemnation -- contents -- vesting upon filing. (1) When payments have been made and the bond, if appropriate, has been given as required by 70-30-307 and 70-30-308, the court shall make a final order of condemnation. The order must describe the property condemned, the purposes of the condemnation, and any appropriate payment for damages to the property actually taken as well as to any remaining parcel of property that may be adversely affected by the taking. For a private historic access right-of-way described in 70-30-107, the purpose of the condemnation must be limited to the historic use established by the evidence.

(2) A copy of the order must be filed in the office of the county clerk and recorder, and upon filing, the property described in the order vests in the condemnor for the purposes specified in the order."

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