

HOUSE BILL NO. 293

INTRODUCED BY E. LIESER

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A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT INTEREST BE INCLUDED ON AWARDS OF NECESSARY EXPENSES FOR LITIGATION IN CONDEMNATION PROCEEDINGS; AMENDING SECTIONS 70-30-302, 70-30-305, AND 70-30-306, 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 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, including necessary expenses of litigation as defined in 70-30-306, 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withdraws from the court a fraction of the amount finally awarded, interest on that fraction ceases on the date it is withdrawn but interest on the remainder of the amount finally awarded continues to the earlier of the dates referred to in subsections (2)(a) and (2)(b) until the full amount is withdrawn from the court.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

1 Montana supreme court expires.

2 (5) Improvements put upon the property subsequent to the date of the service of summons may not be
3 included in the assessment of compensation or depreciation in current fair market value and may not be used
4 as the basis of computing compensation or depreciation."
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6 **Section 2.** Section 70-30-305, MCA, is amended to read:

7 **"70-30-305. Condemnor to make offer upon appeal -- award of expenses of litigation.** (1) The
8 condemnor shall, within 30 days after an appeal is perfected from the condemnation commissioner's award or
9 report or not more than 60 days after the waiver of appointment of commissioners, submit to the condemnee a
10 written final offer of judgment for the property sought to be taken, together with the accrued necessary expenses
11 of the condemnee. If at any time prior to 10 days before trial the condemnee serves written notice that the offer
12 is accepted, either party may then file the offer and notice of acceptance, together with proof of service of the
13 acceptance, and judgment must be entered. An offer not accepted is considered withdrawn and evidence of the
14 offer is not admissible at the trial except in a proceeding to determine costs. The fact that an offer is made but
15 not accepted does not preclude a subsequent offer.

16 (2) In the event of litigation and when the condemnee prevails by receiving an award in excess of the
17 final offer of the condemnor, the court shall award necessary expenses of litigation as defined in 70-30-306 to
18 the condemnee."
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20 **Section 3.** Section 70-30-306, MCA, is amended to read:

21 **"70-30-306. Necessary expenses of litigation defined.** (1) Necessary expenses of litigation as
22 authorized by 70-30-305 mean reasonable and necessary attorney fees, expert witness fees, exhibit costs, and
23 court costs. In the event of litigation and when the condemnee prevails, necessary expenses of litigation must
24 include an award of interest on the expenses determined pursuant to 70-30-302(2).

25 (2) Reasonable and necessary attorney fees are the customary hourly rates for an attorney's services
26 in the county in which the trial is held. Reasonable and necessary attorney fees must be computed on an hourly
27 basis and may not be computed on the basis of any contingent fee contract.

28 (3) Reasonable and necessary expert witness fees may not exceed the customary rate for the services
29 of a witness of that expertise in the county in which the trial is held."
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1 NEW SECTION. **Section 4. Saving clause.** [This act] does not affect rights and duties that matured,
2 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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4 NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

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6 NEW SECTION. **Section 6. Applicability.** [This act] applies to complaints for condemnation filed on
7 or after [the effective date of this act].

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