

1 HOUSE BILL NO. 417

2 INTRODUCED BY K. FLYNN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING EMINENT DOMAIN LAWS; REQUIRING
5 THAT A FINAL WRITTEN OFFER BE REJECTED BEFORE A CONDEMNATION COMPLAINT IS FILED;
6 ALLOWING FOR ADDITIONAL OFFERS; ALLOWING A DISTRICT COURT TO COMMENCE A JURY TRIAL
7 IN DECIDING WHETHER TO ISSUE A PRELIMINARY CONDEMNATION ORDER; REQUIRING THAT THE
8 CLAIM REQUIRED IN THE CONTENTS OF A COMPLAINT FOR CONDEMNATION BE EQUAL TO THE FINAL
9 WRITTEN OFFER MADE BY THE STATE OR ITS AGENT; AMENDING SECTIONS 70-30-110, 70-30-111,
10 70-30-202, 70-30-203, 70-30-206, AND 70-30-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
11 AND AN APPLICABILITY DATE."

12

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

14

15 **Section 1.** Section 70-30-110, MCA, is amended to read:

16 **"70-30-110. Survey and location of property to be taken -- greatest public good -- least private**
17 **injury.** (1) In all cases in which land is required for public use, the state or its agents in charge of the public use
18 may survey and locate the land to be used. The use must be located in the manner that will be most compatible
19 with the greatest public good and the least private injury, and the location is subject to the provisions of
20 70-30-206. The state or its agents in charge of the public use may, after giving 30 days' written notice to the
21 owners and persons in possession of the land, enter upon the land and make examination, surveys, and maps
22 of the land. The entry does not constitute a cause of action in favor of the owners of the land except from injuries
23 resulting from negligence or intentional acts. Upon written request of the state or its agents, the owner shall
24 provide the names and addresses of all persons who are in possession of the owner's land within 14 days from
25 receipt of the written notice. The state or its agents shall within 14 days from receipt of that information furnish
26 written notice to the listed persons.

27 (2) Prior to or at the time of rejection of the final written offer as referred to in ~~70-30-111(4)~~
28 70-30-111(1)(d), the condemnee may provide to the condemnor the condemnee's claim of appropriate measures
29 that the condemnee considers necessary to minimize damages to the property directly affected by the project
30 as well as to minimize damages incurred to the remaining parcel of property."

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2 **Section 2.** Section 70-30-111, MCA, is amended to read:

3 **"70-30-111. Facts necessary to be found before condemnation.** (1) Before property can be taken,
4 the condemnor shall show by a preponderance of the evidence that the public interest requires the taking based
5 on the following findings:

6 ~~(1)~~(a) the use to which the property is to be applied is a public use pursuant to 70-30-102;

7 ~~(2)~~(b) the taking is necessary to the public use;

8 ~~(3)~~(c) if already being used for a public use, that the public use for which the property is proposed to be
9 used is a more necessary public use;

10 ~~(4)~~(d) an effort to obtain the property interest sought to be taken was made by submission of a final
11 written offer prior to initiating condemnation proceedings and the final written offer was rejected.

12 (2) Subsection (1)(d) does not prohibit the condemnor from making further offers in an effort to obtain
13 the property interest sought to be taken, but offers made after the final written offer is submitted pursuant to
14 subsection (1)(d) may not be used to determine whether the condemnee prevails pursuant to 70-30-305. The
15 condemnor shall disclose to a property owner that further offers made in accordance with this subsection (2) are
16 not considered the final written offer."

17

18 **Section 3.** Section 70-30-202, MCA, is amended to read:

19 **"70-30-202. Jurisdiction and venue -- complaint and summons required.** All proceedings under this
20 chapter must be brought in the district court of the county in which the property or some part of the property is
21 situated. A proceeding must be commenced by filing a complaint and issuing a summons. A summons served
22 under this chapter must contain a notice to the condemnee to file and serve an answer. Within 6 months from
23 the date that the summons is served, unless the court shortens or lengthens that time for good cause, the court,
24 ~~sitting without a jury,~~ shall commence a trial on the issue of whether a preliminary condemnation order should
25 be issued."

26

27 **Section 4.** Section 70-30-203, MCA, is amended to read:

28 **"70-30-203. Contents of complaint.** (1) The complaint for condemnation must contain:

29 (a) the name of the corporation, association, commission, or person in charge of the public use for which
30 the property is sought to be taken, who is the plaintiff;

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

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

5 (d) statements of each of the facts necessary to be found in ~~70-30-111~~ 70-30-111(1);

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

11 (f) a statement of the condemnor's claim of appropriate payment for damages to the property proposed
12 to be taken as well as to any remaining parcel of property. The condemnor's claim of appropriate payment for
13 damages must be the same amount as the final written offer that was rejected pursuant to the facts necessary
14 in 70-30-111(1)(d).

15 (2) If a right-of-way is sought, in addition to the items listed in subsection (1), the complaint must show
16 the location, general route, and termini and must be accompanied with a map of the route, so far as the route is
17 involved in the action or proceeding.

18 (3) (a) If a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir
19 is sought to be taken, in addition to the items listed in subsection (1), the complaint must include a description
20 of the reservoir and of the land in which the reservoir is alleged to be contained and a description of all other
21 property and rights sought to be taken for use in connection with the right to store natural gas in and withdraw
22 natural gas from the reservoir.

23 (b) In addition, the complaint must state facts showing that:

24 (i) the reservoir is subject to being taken by the plaintiff;

25 (ii) the underground storage of natural gas in the land sought to be taken is in the public interest;

26 (iii) the reservoir is suitable and practicable for natural gas storage;

27 (iv) the plaintiff in good faith has been unable to acquire the rights sought to be taken; and

28 (v) ~~a statement that~~ the rights and property sought to be taken are not prohibited by law from being
29 taken.

30 (c) The complaint must be accompanied by a certificate from the board of oil and gas conservation as

1 provided in 82-10-304."

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3 **Section 5.** Section 70-30-206, MCA, is amended to read:

4 **"70-30-206. Powers of court -- preliminary condemnation order.** (1) In a condemnation proceeding,
5 the court may:

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

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

8 and

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

11 (b) subject to 70-30-104(2), limit the interest in real property sought to be taken if in the opinion of the
12 court the interest sought is not necessary.

13 (2) If the court finds and concludes from the evidence presented that the public interest requires the
14 taking of an interest in real property and that the condemnor has met the burden of proof under ~~70-30-111~~
15 70-30-111(1), the court shall enter a preliminary condemnation order providing that the condemnation of the
16 interest in real property may proceed in accordance with the provisions of this chapter.

17 (3) (a) If the property sought to be taken is a sand, stratum, or formation suitable for use as an
18 underground natural gas storage reservoir and the existence and suitability of the property for that use has been
19 proved by the condemnor based upon substantial evidence, the order of the court must direct the condemnation
20 commissioners to determine the amount to be paid by the condemnor to each person for each person's interest
21 in the property sought to be taken for use as an underground natural gas storage reservoir.

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

24 (i) the use of the underground natural gas storage reservoir;

25 (ii) the use of so much of the surface as is required in the operation of the reservoir and for the use in
26 connection with the creation, operation, and maintenance of the reservoir; and

27 (iii) all the native gas contained in the reservoir. However, the amount to be paid for the native gas may
28 not be less than the market value of the gas.

29 (4) The court shall appoint three persons, qualified and recommended as experts by the board of oil and
30 gas conservation, to assist and advise the commissioners in determining the compensation and damages to be

1 paid by the condemnor to each person for each person's interest in the property sought to be taken. The fees and
2 expenses of the experts are chargeable as costs of the proceedings to be paid by the condemnor.

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

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9 **Section 6.** Section 70-30-305, MCA, is amended to read:

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

19 (2) In the event of litigation and when the condemnee prevails either by the court not allowing
20 condemnation or by the condemnee receiving an award in excess of the final written offer of the condemnor that
21 was rejected pursuant to the facts necessary in 70-30-111(1)(d), the court shall award necessary expenses of
22 litigation to the condemnee."

23

24 **NEW SECTION. Section 7. Saving clause.** [This act] does not affect rights and duties that matured,
25 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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27 **NEW SECTION. Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are severable
28 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
29 remains in effect in all valid applications that are severable from the invalid applications.

30

1 NEW SECTION. **Section 9. Effective date.** [This act] is effective on passage and approval.

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3 NEW SECTION. **Section 10. Applicability.** [This act] applies to complaints for condemnation filed on
4 or after [the effective date of this act].

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