

HOUSE BILL NO. 413

INTRODUCED BY K. FLYNN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE FACTS NECESSARY TO BE FOUND BEFORE CONDEMNATION; DEFINING "JUST COMPENSATION"; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AMENDING SECTIONS 70-30-101, 70-30-110, 70-30-111, AND 70-30-203, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 70-30-101, MCA, is amended to read:

"70-30-101. ~~Eminent domain defined~~ **Definitions.** In this chapter, unless the context requires otherwise, the following definitions apply: Eminent domain

(1) "Eminent domain" is the right of the state to take private property for public use. This right may be exercised in the manner provided in this chapter.

(2) "Just compensation" means no less than the value of the property taken, lost profits and lost access, and damages to the remaining property caused by the taking. The term also includes necessary expenses of litigation to be awarded by the court when the private property owner prevails.

(3) "Lost access" means a material impairment of direct access to property, a portion of which has been taken or damaged.

(4) "Lost profits" means a loss of business profits, subject to adjustment using generally accepted accounting principles consistently applied, from a business or farm operation for a period not to exceed 3 years from the date of valuation that is suffered as a result of a taking of the property on which the business or farm operation is located, provided that:

(a) the business is owned by the owner of the property taken; or

(b) the farm operation is operated by the owner of the property taken."

Section 2. Section 70-30-110, MCA, is amended to read:

**"70-30-110. Survey and location of property to be taken -- greatest public good -- least private injury.** (1) In all cases in which land is required for public use, the state or its agents in charge of the public use



1 may survey and locate the land to be used. The use must be located in the manner that will be most compatible  
 2 with the greatest public good and the least private injury, and the location is subject to the provisions of  
 3 70-30-206. The state or its agents in charge of the public use may, after giving 30 days' written notice to the  
 4 owners and persons in possession of the land, enter upon the land and make examination, surveys, and maps  
 5 of the land. The entry does not constitute a cause of action in favor of the owners of the land except from injuries  
 6 resulting from negligence or intentional acts. Upon written request of the state or its agents, the owner shall  
 7 provide the names and addresses of all persons who are in possession of the owner's land within 14 days from  
 8 receipt of the written notice. The state or its agents shall within 14 days from receipt of that information furnish  
 9 written notice to the listed persons.

10 (2) Prior to or at the time of rejection of the final written offer as referred to in ~~70-30-111(4)~~  
 11 70-30-111(1)(f), the condemnee may provide to the condemnor the condemnee's claim of appropriate measures  
 12 that the condemnee considers necessary to minimize damages to the property directly affected by the project  
 13 as well as to minimize damages incurred to the remaining parcel of property."  
 14

15 **Section 3.** Section 70-30-111, MCA, is amended to read:

16 **"70-30-111. Facts necessary to be found before condemnation.** (1) Before property can be taken,  
 17 the condemnor shall show by a preponderance of the evidence that the public interest requires the taking based  
 18 on the following factual findings:

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

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

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

23 (d) the condemnation is the least amount of damage to private property for the greatest public good;

24 (e) the condemnation is the most limited interest in real property necessary for the project; and

25 ~~(4)~~(f) an effort to obtain the property interest sought to be taken was made by submission of a written  
 26 offer and the offer was rejected.

27 (2) The condemnor bears the burden of proving the necessary facts included in subsection (1) by a  
 28 preponderance of the evidence prior to issuance of a preliminary condemnation order."

29

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

- 1           **"70-30-203. Contents of complaint.** (1) The complaint for condemnation must contain:
- 2           (a) the name of the corporation, association, commission, or person in charge of the public use for which
- 3 the property is sought to be taken, who is the plaintiff;
- 4           (b) the names of all owners, purchasers under contracts for deed, mortgagees, and lienholders of record
- 5 and any other claimants of record of the property sought to be taken, if known, or a statement that they are
- 6 unknown, who are the defendants;
- 7           (c) a statement of the right of the plaintiff to take the property for public use;
- 8           (d) statements of each of the facts necessary to be found in ~~70-30-111~~ 70-30-111(1);
- 9           (e) a description of each interest in real property sought to be taken, a statement of whether the property
- 10 sought to be taken includes the whole or only a part of the entire parcel or tract, and a statement that the interest
- 11 sought is the minimum necessary interest. All parcels lying in the county and required for the same public use
- 12 may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate
- 13 or separate them to suit the convenience of the parties.
- 14           (f) a statement of the condemnor's claim of appropriate payment for damages to the property proposed
- 15 to be taken as well as to any remaining parcel of property.
- 16           (2) If a right-of-way is sought, in addition to the items listed in subsection (1), the complaint must show
- 17 the location, general route, and termini and must be accompanied with a map of the route, so far as the route is
- 18 involved in the action or proceeding.
- 19           (3) (a) If a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir
- 20 is sought to be taken, in addition to the items listed in subsection (1), the complaint must include a description
- 21 of the reservoir and of the land in which the reservoir is alleged to be contained and a description of all other
- 22 property and rights sought to be taken for use in connection with the right to store natural gas in and withdraw
- 23 natural gas from the reservoir.
- 24           (b) In addition, the complaint must state facts showing that:
- 25           (i) the reservoir is subject to being taken by the plaintiff;
- 26           (ii) the underground storage of natural gas in the land sought to be taken is in the public interest;
- 27           (iii) the reservoir is suitable and practicable for natural gas storage;
- 28           (iv) the plaintiff in good faith has been unable to acquire the rights sought to be taken; and
- 29           (v) ~~a statement that~~ the rights and property sought to be taken are not prohibited by law from being
- 30 taken.

1 (c) The complaint must be accompanied by a certificate from the board of oil and gas conservation as  
2 provided in 82-10-304."

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4 NEW SECTION. Section 5. Severability. If a part of [this act] is invalid, all valid parts that are severable  
5 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part  
6 remains in effect in all valid applications that are severable from the invalid applications.

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8 NEW SECTION. Section 6. Effective date. [This act] is effective upon approval by the electorate.

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

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13 NEW SECTION. Section 8. Submission to electorate. [This act] shall be submitted to the qualified  
14 electors of Montana at the general election to be held in November 2014 by printing on the ballot the full title of  
15 [this act] and the following:

16  YES to revising the facts necessary to be found before condemnation and defining just  
17 compensation for the purposes of eminent domain.

18  NO to revising the facts necessary to be found before condemnation and defining just  
19 compensation for the purposes of eminent domain.

20 - END -