

HOUSE NATURAL RESOURCES COMMITTEE MINUTES
February 18, 1983

The House Natural Resources Committee convened at 12 p.m., February 18, 1983, in Room 224K of the State Capitol, with Chairman Harper presiding and all members present except Reps. Neuman and Quilici, who were excused. Chairman Harper opened the meeting to a hearing on SJR 8.

SENATE JOINT RESOLUTION 8

REPRESENTATIVE GLENN MUELLER, District 21, introduced the bill for Senator Severson as he is also a member of the Western States Legislative Forestry Task Force. He said this is a bill to send delegates to this task force. He said we have been doing this for a number of years. He said it has been indicated to him that the forest service listens to the concerns of the involved people as relayed by the delegates.

ROBERT HELDING, Montana Wood Products Association, said he is one of the industry liaison people on the committee. He said they meet approximately four times a year and it is one of the best committees he has been associated with.

Since there were no other proponents and no opponents, Rep. Mueller closed by thanking the committee for their time.

Chairman Harper closed the hearing on this bill and opened the hearing on HB 825.

HOUSE BILL 825

REPRESENTATIVE GLENN JACOBSEN, District 1, chief sponsor, handed to the members a series of amendments (copy is Exhibit 1). He said this bill is to generally revise the eminent domain laws. He recommended the bill be put in a subcommittee to work with the various groups and come up with a law that we can live with.

TONI KELLEY, Northern Plains Resource Council, spoke in support and a copy of her testimony is Exhibit 2 of the minutes.

TERRY MURPHY, Montana Farmer's Union, said the suggestion for a subcommittee is a good one as the bill needs considerable cleanup. He said "highest and best use" and "good faith effort" are both difficult phrases to define. On page 8, line 21, he questioned the open notice before going to court as it might restrict someone's access to the courts. He said the bill does have some good points one of which is to redefine public needs.

JEANNE CHARTER, Shepherd, Charter Ranch Inc., said they have had experience with the condemnation proceedings as they have been awaiting a settlement for eight years. She said going to court is the only way to get a fair settlement, but they were one of the very few on the Colstrip line that did go to court.

She said most landowners are in a no-win situation and opt to take what is offered. She said the present law invites abuses as any Tom, Dick or Harry can use this law for anything they dream up that is not an agricultural use. She said under the present law the landowner has the burden of proving by a preponderance of the evidence and why should this be when they are the contented ones to leave things as they are.

WILLIE DAY, Farmers Union, said he is a reluctant supporter of the bill as he said it is a poorly worded bill. He said he supports putting it into a subcommittee. He said a definition is needed for the highest and best use and the good faith effort. He said something overlooked is repealing some of the left-out sections. He said the bill does not protect the irrigation projects. He questioned why on page 12 county commissioners are used for a town that is incorporated. He questioned the time limits of having to answer within 15 days on a survey that may have been done without his knowledge, and 5 days from then may be required to be in court.

JO BRUNNER, WIFE, said she appreciated the remarks of Terry Murphy.

PATRICK R. UNDERWOOD, Montana Farm Bureau Federation, spoke in support and a copy of his testimony is Exhibit 3.

FRANCES CLINCH, Montana Senior Citizens, spoke in support and a copy of his testimony is Exhibit 4.

RICHARD BERG, Martinsdale, representing self, spoke in support. He said help is needed as the corridors can go any way any time. He said his family has been on the land for 100 years. He felt he should at least have the right to say where the route goes. He said 825 is a step in the right direction and he hoped something could be done.

LYLE JONES, rancher outside of Big Timber, said they have two power and one oil transmission line going through their place. He said they are in favor of the bill - needs some work but he felt it could be a good bill.

PAT SMITH, representing himself and NPRC, said these laws are long overdue for a major revision. He said the bill narrows the definition of public use. He said it also gives landowners a better beginning position - not an equal one but better than under existing law. He said the effect of this will be to avoid litigation by encouraging settlements. He said under present law it is often a quick take scenario - there is a quick complaint summons and the landowner must respond as to why the land should

not be condemned and set a reasonable value. He said this is often done unreasonably in advance of the filing. Also, within 90 days of the actual notice to the landowner he has to make a reasonable good faith effort to purchase the property. This bill allows for annual payments on leases and easements which is a benefit to the landowner. He also said the bill must be consistent with public uses that are recognized in the Montana constitution.

BILL GILLEN, Forsyth, NPRC, spoke in support. He said the revisions are long overdue and we are far behind all the other states. He said most of our law was passed 100 years ago when the miners needed to get water to their claims and time was of the essence. He said this is not true anymore. He mentioned a Colstrip project that came before the Board of DNRC in 1976 and 14 months later went to court to condemn the land, but was not built until 1981-82. He said the annual lease will not be anything new as it is being used by the federal and some state governments now. He said the bill will make the law better in that they will know where the lines will go. He said it has taken years to file on water rights but a man has only 15 days to respond to a claim on his land and can be in court in 20 days to protect it.

BILL BROOKE, Montana Stockgrowers, said he agreed with Terry Murphy's testimony. He said he had problems with the bill and was willing to work with the subcommittee.

REPRESENTATIVE BOB REAM, District 85, said he was a co-sponsor of the bill and would like to voice his support. He said the federal government has a uniform eminent domain code if anyone wished to see it. He said he represents a district which includes many ranchers and there are five power lines crossing the district. He said his people are upset about the eminent domain laws.

REPRESENTATIVE TOM ASAY, District 50, said he would like to go on record as supporting the bill.

OPPONENTS

JIM BECK, Department of Highways, said the bill is a mess. Its purpose is to change the regular procedure whereby property is condemned. You have a very short frame to work out a very complex problem and he felt it would be a waste of everybody's time. He said he had always supported the full scale legislature in their review of the laws, but he said the uniform eminent domain laws took years and how can we expect to do this and address all the problems in two to three days. He didn't think the expertise was in this building or in Helena. He said he was willing to work with the subcommittee and help them see some of the problems. He said there are many inconsistencies in the bill that are unconstitutional.

WARD SHANAHAN, Northern Tier Pipeline Company, said they had filed an application with the PSC in 1976 as a common carrier of crude oil. He said there is a serious legal question as to whether we are covered by this bill. He said they have spent 55 million dollars in getting the necessary permits, etc., through the states affected. He said Cenex Refinery in Billings is quite interested in their bringing this crude oil into Montana. He said they have approval for the general route of their line. He said they will be taking easements on the land they pass through so in a number of years the farmer will get his land back. He was afraid this bill just could stop their company in their tracks.

TOM DOWLING, Montana Railroad Association, spoke in opposition.

MIKE FITZGERALD, President, Montana Trade Commission, spoke in opposition and a copy of his testimony is Exhibit 5.

TOM EBZERY, Billings, Tongue River Railroad, spoke in opposition. He said they have spent several million dollars on feasibility studies to develop an application and their Draft EIS is coming out soon. He said they have identified 42 or 43 landowners that will be affected. He said they will use eminent domain only as a last resort because if just one landowner says no the whole project would be jeopardized. He said a railroad is different from a power line as it is almost impossible to go around a landowner. He said the idea of collecting less than fee interest in the property could cause them financing problems. He asked in regard to returning the land to its original owner, what if the landowner had sold and doesn't live near the property. He said the bill as a whole needs a lot of study. He said he'd be happy to work with any subcommittee.

DON ALLEN, Montana Petroleum Association, opposed the bill and said ROBERT HELDING, Montana Woodproducts Association, had asked him to enter his name as an opponent. He said Mr. Holding opposed the bill because logging roads were eliminated from the eminent domain law. He said to pass such sweeping legislation without fully reviewing the full effects is not wise. He said he supports the idea of an interim committee to study all aspects. He felt the bill would have a negative economic impact if it became law.

BOB GANNON, Montana Power Company, said they oppose the bill not because they have been eliminated from public use, but because of the procedural changes in the bill. He said this just clouds what is already provided in the law. He felt the bill would encourage long litigation.

BONNIE TIPPY, Montana Coal Council, said this bill would eliminate some important services to our coal mines and one of these is the railroads. Coal is shipped out by railroad spurs and not by truck. With this bill you would not see any new coal mines.

She said the Legislature has been busy carving up the coal tax pie, with this bill the pie would not grow larger but would likely shrink.

REPRESENTATIVE JACOBSEN in closing said last session a resolution to study the eminent domain laws almost made it to the funding stage. He said he agreed to sponsor an eminent domain bill. He said it is unfortunate there are problems that still remain and he requested the bill be put in a subcommittee to see if some of the problems could be worked out. He said the present eminent domain laws are a detriment to agriculture but at the same time they don't want to be a detriment to economic development. He felt with the cooperation of the industries and agriculture the bill could be worked out and transmitted to the Senate where it would be worked on some more.

Questions were asked by the committee.

Chairman Harper said there really wasn't enough time to consider a bill of this magnitude. He said he would appoint a subcommittee and the time it would be meeting would be posted so all would have a chance to have input into the bill. Chairman Harper closed the hearing on this bill and opened the hearing on HB 762.

HOUSE BILL 762

REPRESENTATIVE EARL LORY, District 99, chief sponsor, said this is an old friend using a different name. It was HB 79 in 1979, HB 715 in 1981 and now its HB 762. He said each time it was amended and approved by the House. He said in 1977 was the main change as it was the revision of the entire subdivision law. That set up review for all parcels under 10 acres. Most sales were of 10 acre or greater plots. Then the Legislature raised it to 20 acres and then all divisions went to that amount. Then they would use the occasional sale and the family split. He said 83 percent of the subdivisions have never been subject to a review. Rep. Lory went through the bill pointing out the changes. He said the bill closes the loopholes so there will be no 20 acre splits, family splits and occasional sales. A family split can only be made to one and from then on it would be reviewed and would need to be held by one individual for three years. The occasional sale can only be done once each 12 months and if further subdivided it must be reviewed. Rep. Lory said this bill has been refined through three legislative sessions and is a good bill.

CHARLES LANDMAN, MEIC, spoke next in support and a copy of his testimony is Exhibit 6.

JEAN WILCOX, Missoula County Commissioners, spoke in support of the bill. She said the exemptions were very much of a concern to them. She said a large ranch uses the 20 acre exemption to divide. Each 20 acre parcel divides into 4 or 5 parcels, spacing it out so they can claim occasional sales; then each of the smaller one do the same. Then the people who settle in this residential area come to the local government for services. She felt the people selling and purchasing these lots should be paying their fair share to provide these services.

JIM RICHARDS, Montana Association of Planners, spoke in support. He felt the use of exemptions should be set out in the statutes rather than left to local control. He said in 1975-76 there was a state-wide inventory of the land records and it indicated 93 percent of the land was being divided and skipping review of any kind. He said the vagueness of the language is causing the abuses. He mentioned a subdivision of HUD 235 houses which had a full blown review process, to show that this review can be done without creating expensive lots.

ROBERT S. CUSTER, Montana Association of Registered Land Surveyors, spoke in support with a wish to amend. A copy of his suggested amendments is Exhibit 7.

FRANK CROWLEY, Montana Department of Health, spoke next in support but with a wish to amend. He said his amendment was to avoid confrontations with the court which orders a split of land which must go through subdivision approval. A copy of his suggested amendment is Exhibit 8.

OPPONENTS

DENNIS REHBERG, Montana Association of Realtors, spoke in opposition. He said the exemptions are in the law for a reason. He felt it was a great system. He said there is a need for five acre subdivisions and all other sizes. He said land planners seem to think all people want to live in row houses. He said if the counties are not taking the responsibility of seeing the intent of the subdivision law is enforced, perhaps there is something wrong and perhaps it could be addressed in the bill.

BILL MORSE, attorney from Absarokee, said he represents mostly ranchers. He said a problem that sometimes surfaces is a fourth generation rancher gets financially strapped and sells a couple of parcels of his land. He said no way could he afford to put any improvements on them.

REPRESENTATIVE LORY closed. He said nothing in the bill says you can't have a 5, 10, 15 or 20 acre plot; and if a ranch wants to sell a 40 acre plot, there is no review.

Questions were asked by the committee.

Rep. Hand asked Mr. Rehberg who is to pay for the problems. Mr. Rehberg said the wrong act is being addressed. If a person wants the services, a special improvement district could be formed to provide it.

HOUSE BILL 770

REPRESENTATIVE STELLA JEAN HANSEN, District 96, chief sponsor, said this bill is to exempt certain condominiums from the Montana Subdivision and Platting Act and to include all condominiums under the Sanitation in Subdivisions Act. She said there were some suggested amendments and a copy of them is Exhibit 9.

JEAN WILCOX, Missoula County Commissioners, spoke next in support and a copy of her testimony is Exhibit 10.

FRANK CROWLEY, Department of Health, said they support the bill with the amendments which are exhibit 8.

JIM RICHARDS, Montana Association of Planners, spoke in support. He entered into the records a letter from NICHOLAS P. KAUFMAN, President of the Montana Association of Planners (Exhibit 11).

DENNIS REHBERG, Montana Association of Realtors, said the amendments have taken care of their concerns so they are in support of the bill with the amendments incorporated.

REPRESENTATIVE HANSEN closed. She said the passage of this bill would clear up a lot of their problems in Missoula where this kind of conversion is going on.

Questions were asked by the committee.

Chairman Harper closed the hearing on this bill and opened the meeting to executive session as the chief sponsor for HB 806 was not present.

EXECUTIVE SESSION

HOUSE BILL 770 Rep. Metcalf moved the amendments which are exhibit 8 of these minutes. The motion carried unanimously with those present. Rep. Metcalf moved the bill AS AMENDED DO PASS. This motion carried unanimously with those present (absent were Reps. Mueller, Bergene, Quilici, Jensen, Nordtvedt and Neuman).

HOUSE BILL 825 Chairman Harper appointed the following sub-committee to work on this bill: Rep. Ream, Chairman; Rep. Addy; Rep. Bertelsen.

HOUSE BILL 762 Rep. Fagg moved the amendment, exhibit 7 of the minutes. The motion carried unanimously with those present (same absent as previously mentioned). Rep. Fagg moved AS AMENDED DO PASS. This motion also carried unanimously with those present (same absent).

SENATE JOINT RESOLUTION 8 Rep. Fagg moved that the bill BE CONCURRED IN. This motion carried unanimously with all present. Rep. Mueller had left a request to have his vote cast for this bill.

HOUSE JOINT RESOLUTION 20 Rep. Metcalf said we are not to direct in a resolution but to request. Also it should be referring to the Sanitation in Subdivisions Act rather than the Subdivision and Platting Act. Also Rep. Marks had requested changing the date to 1984 from 1983. Rep. Metcalf moved that all these amendments be adopted, that the researcher go through the bill and change all the requireds to requesteds and all the musts to shoulds and have the right act be referred to. This motion carried unanimously with all present (absent now were Mueller, Bergene and Nordtvedt).

Rep. Fagg moved the bill AS AMENDED DO PASS. This motion carried unanimously with all present (same absent as previous paragraph).

Chairman Harper closed the executive session and opened the hearing on HB 806.

HOUSE BILL 806

REPRESENTATIVE STEVE WALDRON, District 97, said in a nutshell this bill was the decision of the audit committee. They thought the emphasis should be on protecting the water resources rather than on protecting the water well drillers. He handed to the committee a comparison sheet between this bill and HB 373. A copy of this comparison is Exhibit 12. Rep. Waldron went through the bill discussing each part.

BILL MORSE, Absarokee, Counsel of State Drillers, spoke in opposition. He said this was kind of a redo of the hearing on HB 373, which has already received a do pass. He said their biggest reason to oppose the bill is that it gives power to some bureaucratic authority to say that a job was performed incorrectly and requires the job to be done again and charged against the driller. He said he can't see where the due process would be there. He said that would be asking somebody in the Natural Resources organization to assume quasi judicial authority.

He said in all cases in any industry providing a public service costs funnel down to the consumer. He said you fail to recognize the structure of the board (3 public officials and only two drillers) if you feel the board is protective of the drillers at the expense of the public. He said the drillers would be out voted on the board. He said they don't see the need to be transferred to the Department of Natural Resources as they have been under the Commerce Department and this has worked well. He said the complaint system is functional now. Any consumer has the right to come forward and air a complaint before the board. He said they get a maximum of 5 or 6 a year. He said one of the main reasons for letting them conduct their own business is the cost. The budget proposed by DNRC would be an increase of as high as 1000%. He said they now support their own board at a cost of \$10,000-\$12,000 a year. If the switch were made it would have to go onto the taxpayer or the driller would go out of business.

On bonding - he said he was hesitant to get into that. He said the bond as they have it today is virtually of no value. He said the consumer has no right to proceed against the bond as it is today. The bond is payable only to the administrative board and there has never been anyone that has moved against that bond. He said there is one in Great Falls now but he has no direct knowledge of that. He said the amount of bond is \$4,000 and that is above the normal for household and domestic wells.

Disclosure - he said there is no way they could look through an eight inch hole and peer into the bowels of the earth. He said all holes can differ. He said it is impossible to give a completion date as they don't know what is below that particular spot.

He said they were a little concerned that the DNRC didn't come to the hearing on February 7. He said they are back again on exactly the same argument and this bill was in the mill before. He said it cost them roughly \$5000 to all come again to Helena.

Chairman Harper assured him that the Department was present and sitting behind them today.

REPRESENTATIVE BOB MARKS, District 80, spoke as an opponent. He said he was the sponsor of the other bill HB 373. He said at the time HB 373 was heard there was no mention that there was another bill dealing with this same subject. He said this is a burden on all these people who have come a distance to testify twice. He said this bill as an audit committee bill should have been in the makings early as a predraft bill.

Rep. Marks said the bill talks about protecting the public. He said the board is made up a member from the Department of Health and two from the Department of Natural Resources and two drillers- so 60 percent of the board is other than the trade people. He felt this should be a good protection to the public and the aquifers. He said as far as complaints were concerned - there were 58 from 1974-81 and these resulted in 3 licenses being revoked and 3 more were not renewed. He said why screw up a good thing that is working and get more bureaucrats invoved. These are individuals trying to make an honest living and we have a board that is protecting the public.

Chairman Harper asked all to stand who were opponents of the bill. About 20 to 25 people stood.

WES LINDSAY, President of the Water Well Board, spoke in opposition. He said they do protect the underground water and license contractors. He said they have handled each and every complaint they have received. He said they would like to see the Water Well Board where it is.

REPRESENTATIVE WALDRON closed. He said this is an audit committee bill. He said the committee should have been aware there was another bill but must have decided not to hear the two bills together. He said that was to set the record straight. He said the Water Well contractors number about 153 and this group represents about 26 percent of the drillers of the state and that doesn't necessarily represent a majority, but they do have a right to be heard. He said he was sorry about the two trips. He said he would like to make one point on the complaints and that is under current regulations you have to appear in person before the board to ensure your complaint is heard. He said he hoped that would be changed. He said as far as the cost goes it would be \$50,000 under HB 806 and that would be doing something they aren't doing now and that is to ensure there are inspections. He said they don't have the money to have qualified people do inspections. It would also pay for an apprenticeship program and there is no established apprenticeship program now. He said under the disclosure form you don't have to look into the bowels of the earth. If you are going to drill a well you should be able to tell them what it will cost. He said he didn't think it would be a hardship to have what they intend to charge in writing. He said it would also state a starting date and that should not be too difficult to tell. He said neither of these requirements should be too burdensome to the driller. He said the bill requires it be put in writing rather than word of mouth.

Questions were asked by the committee.

Rep. McBride asked what does the public get from a licensed well driller versus the unlicensed driller. Mr. Lindsay replied that the unlicensed are drilling without supervision. To get a license they have to work one year under a licensed driller, take an exam so you know he knows water well construction and water well laws. Rep. McBride said based on board minutes and board interviews the board knows there are unlicensed drillers operating, why aren't they enforcing the law that all are to be licensed? Mr. Lindsay said this was true 5 to 8 years ago but today the only unlicensed they are aware of are the ones working under supervision of a licensed driller.

Rep. Iverson asked for an example of how the board was not protecting the resources. Rep. Waldron said unlicensed drillers around punching holes and not paying attention to pollution requirements, perforated pipe. Rep. Iverson asked what the board has not done. Rep. Waldron said one thing is to have the complaintant appear in person instead of taking action against the driller which appears to be protecting the driller rather than the complaintant.

Chairman Harper closed the hearing on this bill and opened the meeting to a further executive session.

EXECUTIVE SESSION

HOUSE BILL 806 Rep. Fagg moved to TABLE the bill. The motion carried with Rep. Hand voting no and absent was Rep. Mueller (left a negative vote on bill).

HOUSE BILL 228 Rep. Quilici discussed the amendments which are Exhibit 13 of the minutes.
Rep. Metcalf moved to strike on page 2, lines 16 to 20. He said the whole thing is just a statement of public policy so this language is not needed. Rep. Quilici said he had no objection to this. Rep. Metcalf moved also to accept the amendments No. 1, 2 and 4 on exhibit 13. This motion carried unanimously with those present (absent were Reps. Mueller and McBride).

Rep. Addy moved the bill AS AMENDED DO PASS. This motion carried unanimously with those present (absent now were Reps. Mueller and Nordtvedt).

Meeting adjourned at 3 p.m.

Respectfully submitted,



HAL HARPER, Chairman

Emelia A. Satre, Sec.

MEMORANDUM

TO: HOUSE NATURAL RESOURCES COMMITTEE MEMBERS
FROM: JOHN CARTER
RE: BILL SUMMARIES ON HBs 762, 770, 825 and SJR 8

HB 762
LORY

This bill seeks to generally revise the Subdivision and Platting Act and other land-use statutes. Among other things, the bill would:

- prescribe certain elements that a city or county master plan must contain;
- redefine the term "subdivision";
- revise the existing exemption provisions for certain types of land divisions;
- require the governing body responsible for reviewing a preliminary plat to do so within 60 days - if not, the subdivision is automatically approved;
- revise the provision for summary review of minor subdivisions;
- create a requirement that the cumulative impact resulting from several minor subdivisions be assessed under the review provisions for major subdivisions.

HB 770

S.J. HANSEN

This bill seeks to expand on exemption from coverage of the Subdivision and Platting Act that now exists for certain types of condominiums. The bill would also eliminate an existing exemption for condominiums under the Sanitation in Subdivisions Act.

HB 806
WALDRON

This bill seeks to abolish the Board of Water Well Contractors, transferring its authority to DNRC

HB 825
JACOBSON

This bill seeks to generally and substantially revise Montana's eminent domain laws.

SJR 8
SEVERSEN

This resolution seeks to direct the Committee on Committees to appoint two representatives and two senators to represent Montana on the Western State Legislative Forestry Task Force.

VISITOR'S REGISTER

HOUSE NATURAL RESOURCES COMMITTEE

BILL HB 825

DATE 2/18

SPONSOR JACOBSON

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
Joni Kelley	Neen Twp	NPRC	✓	
John Kelly	Big Timber	BVA	✓	
Tom Beck	Helena	Loggers		✓
Richard Bero	Martinsdale	MYSELF	✓	
Paul Humber	Melville	myself	✓	
Jeanne Charter	Shepherd	Charter Ranch Inc	✓	
George Rice	Gardiner	Rancher/owner	✓	
John Brown	Helena	W.I.E.T.		
Chris Murphy	St. Falls	Mt. Farmer Union		
PAT Smith	Billings	Myself / NPRC	✓	
Tom Dowling	Mt. RR Assn	Helena		X
Mary A Langley	Mont. Mining Assn.	Helena		X
W. Mac Roberts	Independent Landman	Helena		X
Dennis Stiers	Arco/Arco/Arco	Helena		X
Don Balle	Mt. Petroleum Assn.	Helena		✓
John Kelly	Shell Oil Company	Billings		✓
John Kelly	Helena	Mt. Trade Com		✓
Bob Hedberg	Messena	Mt. Wood Products		✓
KEITH OLSON	KALISPELL	MT. LOGGING ASSN.		✓
Wm. Cuddy	Thompson Falls	Cuddy Logging Inc.		✓

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

TOM EBZERY BILLINGS TONGUE RIV. R/C

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Bill Gillen Forsyth

N.P.R.C.

825

Ex. 1

1. Page 2, line 19, following "chapter" STRIKE the period and INSERT a comma and the following: "except as provided in Article IX, Section 3 of the Montana Constitution".

2. Page 3, line 2, following the period INSERT: "'Minimum Estate' means the least property interest in or to land or other real property necessary in order to effectuate the public use to which condemnation is sought, including but not by way of limitation, leaseholds, easements, licences, and fee simple."

3. Page 7, line 7, following the word "lands" STRIKE the period and INSERT a semicolon and the following: "(4) the uses allowed under Article IX, Section 3 of the Montana Constitution."

4. Page 10, line 1, following the word "by" STRIKE the word "law" and INSERT "this chapter".

5. Page 13, line 7, following the period INSERT: "'Good faith effort' means the condemnor does the following:

- (a) offers by actual notice to the condemnee the fair market value of the minimum estate sought to be condemned;
- (b) waits 90 days after making such offer before filing a complaint as provided in this chapter; and
- (c) refrains from coercive action to compel a sale, a particular sales price, or any condition or clause of a sale agreement."

6. Page 14, line 1, following section 10 INSERT A NEW SECTION:

"70-30-207 Preliminary Condemnation Order -- Trial by Jury -- Appeal. (1) The court shall not issue any orders granting the condemnor any rights of possession prior to the entry of a preliminary condemnation order, excepting, however the right of the condemnor as set forth in 70-30-110.

(2) Before a preliminary condemnation order may be entered and an estate may be taken, the condemnor must establish by a preponderance of evidence:

- (a) that the use to which it is to be applied is a public use authorized by this chapter;
- (b) that the taking is necessary to such use;
- (c) that the condemnor is authorized to exercise the right of eminent domain by this chapter;
- (d) that the estate condemned is the minimum estate;
- (e) if already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use;
- (f) that a good faith effort to purchase the minimum estate required at a valuation equal to the highest and best use has been made and failed; and
- (g) that the condemnor will, or will not, be required to acquire on uneconomic remnant.

(3) The court may enter a preliminary condemnation order only after all the determinations required herein have been made.

(4) Either party may demand and be entitled to a trial by jury on any disputed factual issue.

(5) Any party may appeal the preliminary condemnation order to the Montana Supreme Court as in other cases.

RENUMBER SUBSEQUENT SECTIONS

7. Page 14, lines 4, STRIKE the words "filing of the last answer" and INSERT "entry of the preliminary condemnation order".
8. Page 17, lines 8 through 16, STRIKE IN THEIR ENTIRETY, AND RENUMBER SUBSEQUENT PARAGRAPHS. Note change needed on page 18, line 19 and 22.
9. Page 19, lines 16 through 20, STRIKE IN THEIR ENTIRETY and INSERT: "Following the entry of the preliminary condemnation order pursuant to Section 70-30-207, the court may enter an order allowing the condemnor to take possession of the estate granted by the court."
10. Page 19, line 21, following "(7)" STRIKE the word "Costs" and INSERT "Litigation Expenses".
11. Page 20, line 6, following "The", STRIKE the words "service of the summons" and INSERT "entry of the preliminary condemnation order".
12. Page 20, line 18, following "The" STRIKE the words "service of the summons" and INSERT "entry of the preliminary condemnation order".
13. Page 22, line 21, following "The" STRIKE the words "judge's determination of the estate granted" and INSERT "preliminary condemnation order".
14. Page 24, line 9, STRIKE the word "judge" and INSERT "court".
15. Page 24, line 10, STRIKE the word "judge" and INSERT "court".
16. Page 24, line 11, STRIKE the word "judge" and INSERT "court".
17. Page 25, line 15, STRIKE the word "judge's" and INSERT "court's".

18. Page 1 line 11 Strike "and 82-10-301 through"
19. Page 1 line 12 Strike "82-10-305"
20. Page 12 line 11 through page 13 line 4 should not be eliminated.
21. Page 6 line 18-19 should not be eliminated.

TESTIMONY OF TONI KELLEY, CHAIRPERSON OF THE NORTHERN PLAINS
RESOURCE COUNCIL, ON HB 325, BEFORE THE HOUSE NATURAL RESOURCES
COMMITTEE, FEBRUARY 18, 1983

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I AM TONI KELLEY,
CHAIRMAN OF THE NORTHERN PLAINS RESOURCE COUNCIL, AN ORGANIZATION
THAT HAS SOUGHT TO PROTECT LANDOWNER RIGHTS SINCE ITS INCEPTION
IN THE EARLY 1970'S.

I AM HERE TO TESTIFY IN SUPPORT OF HB 325, WHICH PROPOSES
REFORM OF MONTANA'S EMINENT DOMAIN LAW. EMINENT DOMAIN IS
A NECESSARY POWER FOR PUBLIC NECESSITIES, BUT AS IT STANDS NOW,
MONTANA'S LAW IS SO BROAD THAT IT IS A LEGAL LICENSE TO STEAL;
ANYONE CAN CONDEMN FOR ALMOST ANYTHING.

OTHER WESTERN STATES THAT HAVE ANTIQUATED LAWS SIMILAR TO MONTANA'S
ARE IMPROVING THEM. FEW STATES ALLOW PRIVATE CONDEMNATION AT ALL, AND
MOST HAVE NEVER ALLOWED IT.

THE POWER OF EMINENT DOMAIN MUST BE USED CAREFULLY AND
PRUDENTLY. WHILE WE FULLY UNDERSTAND THE NECESSITY OF EMINENT
DOMAIN FOR TRULY PUBLIC USES, WE FEEL LANDOWNERS NEED TO BE
TREATED FAIRLY. IT IS DISAPPOINTING AND FRUSTRATING TO BE
THREATENED WITH CONDEMNATION, JUST BECAUSE IT IS EASIER OR
CHEAPER FOR A PRIVATE COMPANY TO DO SO, RATHER THAN TO GO TO

THE REALTOR OR NEGOTIATE IN GOOD FAITH WITH LANDOWNERS.

THIS BILL IS AN EFFORT TO PROTECT PRIVATE PROPERTY RIGHTS.
SINCE AGRICULTURE IS MONTANA'S NUMBER ONE BUSINESS, IT ONLY
SEEMS REASONABLE TO PROTECT THIS VITAL ELEMENT OF OUR ECONOMY.
AN EMINENT DOMAIN LAW THAT PROTECTS LANDOWNERS IS NOT ANTI-BUSINESS
OR ANTI-GROWTH, IT IS GOOD AND FAIR PUBLIC POLICY. THANK YOU.



Ex. 3

MONTANA FARM BUREAU FEDERATION

502 SOUTH 19th

Dial 587-3153

BOZEMAN, MONTANA 59715

BILL NUMBER. HB 825

DATE Feb 18, 1983

SUPPORT

OPPOSE

AMMEND

NAME Patrick R. Underwood

COMMENTS:

The MFBF supports HB 825. Much of the language of this bill is taken from both the Montana Farm Bureau and the American Farm Bureau Policy books.

We do realize this is a complex bill... and it may well address some things which effect other groups which must be addressed by your committee.

The concept that will limit the use of eminent domain to those uses that are truly public, not private are the major items of interest to us.

Montana Senior Citizens Assn., Inc.

WITH AFFILIATED CHAPTERS THROUGHOUT THE STATE

P.O. BOX 423 - HELENA, MONTANA 59624



Ex. 4

18 February 1983

06) 443-5341

Testimony of The Montana Senior Citizens Association on House Bill 825

Mr. Chairman and Members of the Committee,

For the record, my name is Francis Clinch and I represent The Montana Senior Citizens Association, for which I work. I am here to testify on behalf of our association's members in favor of House Bill 825.

A large proportion of MSCA is composed of citizens with backgrounds in agriculture. Because of their longevity, Montana's elderly have a good perspective on the workings of state law throughout the past years, especially as that law affects landowners. At our Annual Meeting in October of 1982, members voiced their concern that the Eminent Domain Law of Montana was too lax in granting and administering that right. MSCA believes that the passage of 825 would remedy this situation and create a more equitable balance in the law. I will, for the sake of brevity, mention two provisions of this legislation which most concern us.

The most common complaint our members voiced was the broad definition of "public usage" found in the current code. This can be seen in its repeated inclusion of "mines, mills and smelters", which assumes that these economic interests will always coincide with the usage of property of the public good. We don't believe this assumption is always correct. This legislation provides a more accurate appraisal of usages which are definitely related to all of Montana's public.

Beyond this primary concern, MSCA approves of the provisions of HB 825 which ensure that the affects of eminent domain on landowners and their land will be as minimal as possible. Close reading of the current code demonstrates that too much leeway is given in allowing properties to be condemned, a situation remedied by the wording of House Bill 825.

(over)

The Eminent Domain Law must provide a critical balance between the necessary usage of our state's lands by all Montanans and the right of the individual landowner to the usage of his or her property. This balance has never been easy, but senior citizens, especially those with close ties to the land, recognize the needs of both sides. Our association believes that House Bill 825 provides for a better balance between the two sides. The provisions mentioned in this testimony and others too numerous to delineate will make Montana's Eminent Domain Law one which will more justly serve all the citizens of the state.

Ex. 5

TESTIMONY

IN OPPOSITION TO HB 825

FROM
MIKE FITZGERALD
PRESIDENT
MONTANA TRADE COMMISSION
SUITE 612 - POWER BUILDING
HELENA, MONTANA

Before the House Natural Resources Committee
February 18, 1983
Helena, Montana

Whether it is intended to or not HB 825, which would overhaul Montana's Eminent Domain law, would immeasurably confound further energy, mineral and timber development in Montana.

In addressing the issues of HB 825, the basic question I believe we need to ask is, "Is further resource development in Montana in the public interest?"

If it is, then I believe HB 825 should not pass. Today in Montana there are over 40,000 Montanans unemployed. Since January, 1980 we have permanently lost over 5,000 primary jobs in Montana which is almost 5% of our primary job base of 110,000 - lost in just two years time. The State Department of Labor announced in November that unemployment checks had become the largest payroll in Montana. They also estimate that 50,000 people may be unemployed in Montana by Spring. The SBA estimates that Montana business bankruptcies are averaging 15 per month, up from an average of 3 per month two years ago. This does not include individual bankruptcies and agricultural foreclosures which have also escalated. Two primary industries in Montana, copper and timber may be in permanent decline. The energy boom predicted in the 70s has never materialized. Coal production has leveled off at less than 35 MM/tons/yr. The energy boom never materialized in Montana and is not likely to, at least, not anywhere close to 1970's predictions. Coal development may be 100 MM/tons/yr. by the year 2000, that's adjusted down from mid 70s projections of 270 MM/tons/yr. by the year 2000. Industrial applications for water have disappeared.

According to the July, 1982 Montana Poll, sponsored by the Great Falls Tribune and the Bureau of Business and Economic

Research, 90% of the Montanans interviewed said they supported economic growth.

In order to provide employment to maintain .6 percent growth and reduce unemployment to 5% we must create, at a minimum, 23,000 new primary jobs in Montana by the year 2000. Many of these new primary jobs will have to be in processing and manufacturing, likely from our resource base. Right now the average new manufacturing job in the United States requires a \$40,000 investment. So you can see we have a substantial job before us in Montana just to maintain a modest growth rate to provide jobs for Montanans.

According to the Bureau of Businesses and Economic Research, "...Our best hope in the 1980's is the mining industry: energy (coal, oil and gas), metallic and non-metallic mining... Average annual earnings in mining are higher than in other industry, and increased mineral production usually means more processing or manufacturing activity as well as a demand for more railroad and other transportation services. The jobs in manufacturing and transportation also are high paying jobs. If Montana is to reverse recent losses and maintain or increase the level of economic welfare of its' citizens, then we must rely on natural resource development."

In my judgement HB 825 would seriously jeopardize further resource development in Montana. If you believe that the present Eminent Domain law needs revising, then I respectfully recommend that you table HB 825 and appoint an interim study committee that can comprehensively review the present law and analyze the economic impacts on Montana's economy.



he Montana Environmental Information Center

- P.O. Box 1184, Helena, Montana 59624 (406) 443-2520
- Flathead Office 433 S. Main, Kalispell 59901 (406) 755-7763

February 18, 1983

Testimony in Support of HB 762

Mr. Chairman and members of the committee, my name is Charles Landman. I am representing MEIC, a citizens organization with 1300 members. I am here in support of HB 762.

The existing Subdivision and Platting Act calls for the review of certain subdivisions and the mere recording of others. Under the law, two instruments of record are used to file subdivisions with local governments. They are the plat and the certificate of survey. Parcels of land not qualifying for exemptions in the S & PA must be surveyed, reviewed, and approved according to the law's requirements. If approved, the subdivision is recorded as a plat. Parcels qualifying for exemptions in the law must be surveyed and often are informally reviewed by county attorneys and planners, but are not subject to the provisions in the law.

It is now common knowledge that most subdivision activity is occurring through the certificate of survey process as unreviewed development. MEIC's 1979/1980 comprehensive land-use inventory in Missoula, Ravalli, Gallatin and Flathead Counties shows that over 90% of subdivided land in those counties has been split without regard to the public interest criteria or the impacts to local taxation, schools, roads, wildlife, or even the safety of new buyers.

How did this occur? It occurred legally by using exemptions in the Act. The exemptions were intended to allow flexibility for people who are not developers but wish to make an occasional sale or pass land on to their family. However, the exemptions have been used increasingly in ways that more resemble subdivisions intended to be reviewed than for the individual needs defined by the exemptions. The simple fact is that because of the loopholes that exist in the Subdivision and Platting Act relatively few subdivisions that are created to

become housing developments receive any kind of review at all. That was not what the original act envisioned.

HB 762 tightens use of exemptions, while allowing legitimate transactions. It redefines subdivision to include many parcels that fall into the 20-acre exemption category. The review procedure is streamlined, providing quick summary reviews of most minor subdivisions and divisions creating parcels of over 40 acres.

HB 762 provides a means for local governments to address the significant impacts of subdivision activity while still allowing the growth of residential development and the legitimate use of exemptions. We urge your support of HB 762.

Thank you

Background on the Subdivision & Platting Act

Use of Exemptions

In 1980, the Montana Environmental Information Center conducted a subdivision inventory, assessing the implementation of the Subdivision & Platting Act and the use of exemptions during the period 1974-1979. The final report provided the following information:

	<u>Missoula Co.</u>	<u>Ravalli Co.</u>	<u>Gallatin Co.</u>
Subdivided Acreage Not Reviewed	91.3%	92.7%	90.1%
Total Unreviewed Acres	38,923.113	34,455.56	35,469.06
Total Subdivided Acres	42,623.02	37,181.94	39,351.06

During the period 1974-1979, the following exemptions were used most frequently to create the unreviewed acreage reported above:

	<u>Missoula Co.</u>	<u>Ravalli Co.</u>
20-acre Exemption	44%	40%
Occasional Sale	23%	21%
Family Conveyance	14%	8.5%
Other	19%	30%

Ex. 87

WITNESS STATEMENT

Name Robert S. Custer Committee On _____

Address PO Box 3416 Missoula, MT. Date 2/18/83

Representing Montana Asso. of Registered Land Surveyors Support X

Bill No. HB-762 Oppose _____

Amend X

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Redefine To 40 Ac. or less
2. Remove Section 12
3. Allow use of 1/32 of Section and lots Not To be surveyed, as they already are
4. Transferable parcels.

State Regulations would be better than
 HB 646 Local Regulations

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

Ex. 8

PROPOSED AMENDMENT TO HB 762

By: Department of Health and Environmental Sciences

Add another section to the bill as follows: ---

Section . Section 76-4-125, MCA, is amended by the addition of the following new paragraph (3):

"76-4-125(3) Any division of land otherwise subject to this part which is ordered by a court of record in this state or which is created by operation of law shall be subject to the requirements of this part.

76-4-124. Type of review and approval required within master planning areas. (1) Within master planning areas adopted pursuant to chapter 1, a subdivision is not subject to sanitary restrictions when the governing body certifies that municipal facilities for the supply of water, disposal of sewage and solid waste will be provided for the subdivision provided in 76-4-127. In this case, department approval is not necessary.

(2) To the extent that municipal facilities for the supply of water or disposal of sewage or solid waste are not to be provided for a subdivision certified to by the governing body, the person wishing to subdivide must obtain department approval as provided in 76-4-122(2)(a).

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 511, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-501 (3).

76-4-125. Review of subdivisions excluded from all or some of the provisions of the subdivision and platting act. (1) When a subdivision as defined in this part is excluded from the provisions of 76-3-301 and 76-3-401 through 76-3-403, but not 76-3-201, and the subdivision is otherwise subject to the provisions of this part, plans and specifications for the subdivision as defined in this part shall be submitted to the department and the department shall indicate by certificate that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction. The plan review by the department shall be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present to the department a preliminary plan of the proposed development, whatever information the developer feels necessary for its subsequent review, and information required by the department.

(b) The department must give final action of the proposed plan within 90 days unless an environmental impact statement is required, at which time this deadline may be increased to 120 days.

(2) A subdivision excluded from the provisions of chapter 3 shall be submitted for review by the department according to the provisions of this part except that the following divisions are not subject to review by the department:

(a) the exclusions cited in 76-3-201 and 76-3-204;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that no dwelling or structure requiring water or sewage disposal is to be erected on the additional acquired parcel and

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 511, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-501 (10).

76-4-126. Right to hearing. Upon denial of approval of subdivision plans and specifications relating to environmental health facilities, the person who is aggrieved by such denial may request a hearing before the board.

PROPOSED AMENDMENT TO HB 770

By: Department of Health and Environmental Sciences

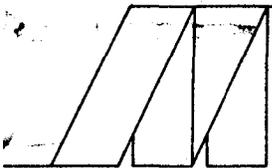
Amend Section 3 of the proposed bill to read:

"76-4-111. Applicability to condominiums.

(1) Except as provided in subsections (2) and (3), condominiums, including those to be constructed on parcels of land that are exempted from review under the provisions of Title 76, Chapter 3, and including conversion of existing structures into condominiums, are subject to the requirements of this part."

(2) Conversions of existing structures into condominiums are not subject to this part where the converted units are to be served by existing municipal water and sewer facilities in a Class I or II city as defined in 7-1-4111.

(3) Where the water or sewage disposal system in an existing building to be converted into condominiums has already been approved under either department requirements or has been approved by the local health department under local requirements, such water or sewage disposal system is not subject to this part.



MISSOULA COUNTY

BOARD OF COUNTY COMMISSIONERS

• Missoula County Courthouse • Missoula, Montana 59802
(406) 721-5700

Went 10

TO: Rep. Hal Harper, Chairman House Natural Resources Committee
FROM: Missoula County Commissioners
DATE: February, 1983

RE: H.B. 770, to clarify reviewability of condominiums under the Montana Subdivision and Platting Act and the Montana Sanitation in Subdivisions Act

Members of the Committee:

We strongly support H.B. 770, to clarify the reviewability of condominiums under the Montana Subdivision and Platting Act and the Sanitation in Subdivisions Act and urge your favorable consideration.

Numerous amendments and interpretations of the Subdivision Act and the Sanitation Act have resulted in confusion for both developers and local governments. The existing statutes define a "subdivision" to include "any condominium". MCA 76-3-103(15) and 76-4-102(7). Subsequent provisions in the same chapters appear to exempt certain types of condominiums:

76-3-202. Exemption for structures on complying subdivided lands. Where required by this chapter, when the land upon which an improvement is situated has been subdivided in compliance with this chapter, the sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to the terms of this chapter.

76-3-203. Exemption for certain condominiums. Condominiums constructed on land divided in compliance with this chapter are exempt from the provisions of this chapter.

76-3-204. Exemption for conveyances of one or more parts of a structure or improvement. The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land, as that term is defined in this chapter, and is not subject to the requirements of the chapter.

MCA 76-3-203 presents an additional question. We do not know whether this refers to condominium projects which have gone through subdivision review and approval or if it also refers to condominiums constructed on land divided by using exemptions to the Subdivision and Platting Act. Because there is no definition for a "condominium" in the Subdivision Act, the common meaning suggests that the term may also include the sale or other conveyance of one or more parts of a building, which is specifically exempted from review and approval under MCA 76-3-204.

Thus the Subdivision Act appears to include condominiums as reviewable subdivisions under the definition section, but then appears to exempt condominiums from review and approval in later sections.

In the last year, the Montana Attorney General has issued three opinions relative to condominiums. These interpretations, which are regarded as law until otherwise overruled by a court of record, conclude:

1. Condominiums are "subdivisions" and are therefore subject to review for sanitation requirements by the Department of Health and Environmental Sciences. 39 A.G. Op. 29.
2. Even condominiums constructed on land divided by using exemptions or divided prior to the enactment of the Sanitation in Subdivision Act are subject to review by the Health Department. 39 A.G. Op. 29.
3. The definition of a "subdivision" in MCA 76-3-103 includes "any condominium" as a separate class of divisions of land. 39 A.G. Op. 14.
4. MCA 76-3-204 which exempts the sale, rent, lease, or other conveyance of one or more parts of a building or structure, does not apply to condominiums. 39 A.G. Op. 28.
5. Conversion of existing rental occupancy apartment house or office buildings to individual condominium ownership are exempted from the requirements of the Subdivision and Platting act by section MCA 76-3-204.

We have no quarrel with these interpretations. New condominium developments should be subject to subdivision review and approval under the Platting Act and should certainly be required to comply with sanitation requirements. However, the statutes need to be clarified.

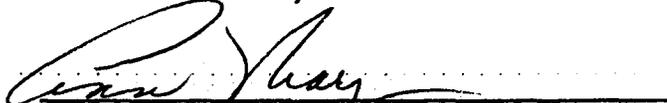
Special consideration needs to be given to the conversion of existing structures into condominium units. Typically, structures which are converted to condominiums are apartment houses and office buildings. Conversion of the ownership status is not likely to create a new impact, as would a new development. As a result, there does not appear to be the same need to review and approve these types of developments. Any specific design standards could be addressed through zoning. In other words, if the project can comply with the existing zoning, then it should be exempt from review and approval.

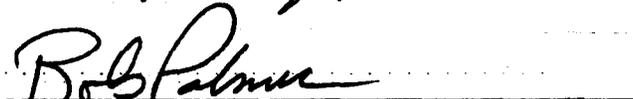
All condominium projects must comply with the Unit Ownership Act, MCA 70-23-101 et seq. Under that act, it is possible to convert groups of buildings and provided a separate parcel land with each unit. Title to the parcel is actually owned in common by a homeowners association, but the use of the parcel is limited to the owner of the unit. Even though this design separates or divides land into a different form of "ownership" (in the sense of use rights), the unity of title still falls outside the definition of a subdivision of land. Again, it seems appropriate to exempt these types of conversions from review and approval, but to require that development of such a project comply with applicable zoning requirements so that any design impacts can be addressed.

We do not believe H.B. 770 is a radical change from the way in which the law is now being interpreted. However, to determine what the state of the law is, several sources have to be read. To simplify matters, it is in everyone's best interest to incorporate these interpretations into one statute.

BOARD OF COUNTY COMMISSIONERS


Barbara Evans, Chairman


Ann Mary Dussault, Commissioner


Bob Palmer, Commissioner

VISITOR'S REGISTER

HOUSE NATURAL RESOURCES COMMITTEE

BILL HB 806

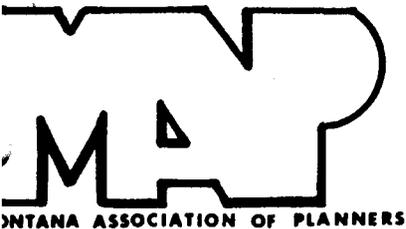
DATE 2/18

SPONSOR WALDRON

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
Bob Munk	Clancy	HD 80		X
Wes Lindsay	Clancy	water well pump		X
Terry Lindsay	Clancy	Lindsay Drilling		X
Pat Byrne	St. Falls	Well Drilling Co.		X
Herbert Greig	Hauser	Well Drilling Co.		X
Michelle Day	Glendine	Self	X	
Robert Chambers	Battle	Driller		X
Wesley Hunt	Looney	Driller		X
Curtis Hill	Billings	Driller		X
Jed Barnes	Billings	WELL DRILLER		X
Harold Jewett	Billings	Driller		X
Frank Boyce	Sidney	well driller		X
Tom Anderson	Sidney	well driller		X
Rich Wright	Glendine	well driller		X
Robert Bond	Terry	well driller		X
Bill Probst	Hi-Sako Kee	Council State Drillers		X
Steve	"	well driller		X
John Mahan	Boreman	Driller		X
Don Anderson	Boreman	Driller		X
Danny Grigby	Glendine	"		X

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



6.12.11
Jim Richards

Hal Harper, Chairman
Natural Resources Committee
Montana House of Representatives

RE: H.B. 770, Clarification of subdivision and sanitation review
of condominium projects

Members of the Committee:

We view H.B. 770 as an important bill and request your favorable
vote for the following reasons:

The law is confusing for planners in the public as well as the
private sector because we are forced to sift through a series of
amendments and Attorney General's opinions in order to find out
if a particular project must be reviewed and approved by a planning
board and governing body. Many of the professionals in our
organization do not have ready access to Attorney General's opinions
and we must therefore contend with the uncertainty in the changes
in interpretations. Having one source to consult on the current
status of the subdivision and sanitation laws with respect to
condominium projects will ease the burden of professional planners
in assisting developers with these laws.

As planners, we support the principle of requiring new condominium
projects to be reviewed and subject to subdivision and sanitation
requirements. New multi-unit structures have the potential to
cause as much adverse impact as a new single-family residential
development comprised of individually owned lots.

However, where an existing structure or group of structures is
converted into condominium form of ownership, we see little, if
any, new impact being created. Where the community has enacted
zoning, the structures would have had to comply with those standards
before being built. Zoning can address site design factors in
much the same way that subdivision regulations can. The advantage
in using zoning criteria is that the community has already made
the determination that certain types of development (e.g. apartment
houses, businesses etc.) would be in the public interest in that
particular area. Therefore, there does not appear to be any
advantage in subjecting condominium conversions to additional
review and approval by the governing body.

We do believe, though, that any project which is, ^{not} or will not be
connected to a public sewer and water system, whether a new
structure or conversion of an existing structure, should meet

current sanitation requirements. Because sanitation conditions are a critical part of public health and safety and because sanitation requirements must be adapted to meet changing physical environmental conditions, we do not find it unreasonable to require conversions not connected to public sewer and water systems to comply with current sanitation standards.

For these reasons, we urge your favorable recommendation on H.B. 770.

On behalf of the Montana Association of Planners,

Nicholas P. Kaufman

Nicholas P. Kaufman
President
Montana Association of Planners
Post Office Box 4531
Missoula, Montana 59806

COMPARISON OF HB 373 WITH AUDIT COMMITTEE BILL
- WATER WELL CONTRACTORS -

House Bill 373

--Reestablishes the Board of Water Well Contractors, as is, within the Department of Commerce under existing authority.

(Audit Committee bill would transfer the board to the Department of Natural Resources and would make the board advisory to the department and would add a public member.)

--Allows the board to set fees commensurate with cost.

(Audit Committee bill would allow the department to set fees commensurate with cost.)

--Reduces the disqualification time for retaking the licensing examination from six months to three months.

(Audit Committee bill would totally delete the six-month waiting period.)

--Increases the bond requirement for contractors from \$1,000 to \$4,000.

(Audit Committee bill would increase the bond from \$1,000 to \$10,000.)

--Changes the requirement that a person bringing a complaint before the board appear in person to one where appearance before the board is at the discretion of the board.

(Audit Committee bill would totally eliminate the requirement that a person bringing a complaint appear in person.)

--Allows for licensing by reciprocity.

(Audit Committee bill would also provide for licensing by reciprocity.)

Additional items covered under Audit Committee Bill not in HB 373.

1. Requires the contractor to pay for redrilling or repair of a well when it is found that the action was required because of substandard work.
2. Requires the use of a disclosure form before a contractor constructs a water well. The information made available to the customer must include:

- starting and completion dates;
 - price for drilling, including time for moving and setting up equipment;
 - method and time of payment;
 - diameter and thickness of well casing;
 - procedure for developing the well and cost;
 - test discharge and draw-down procedure and cost;
 - price if any changes are made; and
 - well record, showing an accurate log of material encountered, static water level, draw-down, discharge, depth.
3. Require separate licenses for water well contractors and drill operators. The contractor maintains the authority to drill a well. The driller is designated an employee of the contractor and is to be supervised by the contractor. Under current law the driller is exempt from licensing as long as he is personally supervised by the contractor. During the audit and at the public hearing, it was apparent that the board has difficulty in enforcing personal supervision. Unlicensed individuals were drilling without personal supervision.
 4. Removes the requirement that suspensions of a license may not be for more than one year.
 5. Gives the department a wider range of disciplinary authority including revocation, suspension, probation, censure, and reprimand.

Proposed Amendments to House Bill 228
(Governor's Office)

1. Page 2, line 9.
~~Following: "rules"~~
Strike: "and other government regulations"
2. Page 2, lines 13 and 14.
~~Following: "rules"~~
Strike: "and other government regulations"
3. Page 2, line 16 through line 20.
Following: "Therefore," "detriment"
Strike: lines 16 through 20.
Insert: "when a person makes financial commitments after completing an application for an environmental permit, it is the policy of the state not to change environmental requirements for such person except upon a showing of a compelling or urgent need to protect public health or the environment, or to comply with federal requirements."
4. Page 2, line 23.
~~Following: "of"~~
Strike: "this part"
Insert: "90-1-102 through 90-1-109"

Strike

STANDING COMMITTEE REPORT

February 19, 19 87

MR. **SPEAKER:**

We, your committee on **NATURAL RESOURCES**

having had under consideration **SENATE JOINT RESOLUTION** Bill No. **8**

Third reading copy (blue)
color

**A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES
OF THE STATE OF MONTANA TO SEND DELEGATES TO THE WESTERN STATES
LEGISLATIVE FORESTRY TASK FORCE.**

Respectfully report as follows: That **SENATE JOINT RESOLUTION** Bill No. **8**

BE CONCURRED IN

**XXXXXX
DO PASS**

STANDING COMMITTEE REPORT (1 of 2)

February 20 1972

MR. SPREKER

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE Bill No. 762

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA SUBDIVISION AND PLATTING ACT AND RELATED LAND-USE STATUTES; EXEMPTING CERTAIN SUBDIVISIONS FROM REVIEW; REDEFINING "SUBDIVISIONS"; AND MAKING CERTAIN MINOR CHANGES; AMENDING SECTIONS 76-1-606, 76-3-103, 76-3-104, 76-3-201, 76-3-207, 76-3-504, 76-3-505, 76-3-601, 76-3-604, 76-3-605, 76-3-609, MCA; AND REPEALING SECTION 76-3-210, MCA."

Respectfully report as follows: That HOUSE Bill No. 762

be amended as follows:

1. Title, line 9.
Following: "76-3-609,"
Insert: "76-4-125,"

2. Page 18, line 18.
Insert: "Section 13. Section 76-4-125 is amended to read:
"76-4-125. Review of subdivisions excluded from all or some of the provisions of the subdivision and platting act. (1) When a subdivision as defined in this part is excluded from the provisions of 76-3-302 and 76-3-401 through 76-3-403, but not 76-3-201, and the subdivision is otherwise subject to the provisions of this part, plans and specifications of the subdivision as defined in this part shall be submitted to the department and the department shall indicate by certificate that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction. The plan review by the department shall be as follows:
(a) At any time after the developer has submitted an application

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DO PASS

under the Montana Subdivision and Platting Act, the developer shall present to the department a preliminary plan of the proposed development, whatever information the developer feels necessary for its subsequent review, and information required by the department.

(b) The department must give final action of the proposed plan within 60 days unless an environmental impact statement is required, at which time this deadline may be increased by 120 days.

(2) A subdivision excluded from the provisions of chapter 3 shall be submitted for review by the department according to the provisions of this part, except that the following divisions are not subject to review by the department:

(a) the exclusion cited in 76-3-201 and 76-3-204;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that no dwelling or structure requiring water or sewage disposal is to be erected on the additional acquired parcel; and

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule.

(3) Any division of land otherwise subject to this part which is ordered by a court of record in this state or which is created by operation of law shall be subject to the requirements of this part.

Renumber: following sections

AND AS AMENDED
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.....**HAL HARPER**.....

Chairman.

STANDING COMMITTEE REPORT

February 19, 19 83

MR. **SPEAKER:**

We, your committee on **NATURAL RESOURCES**

having had under consideration **HOUSE** Bill No. **770**

First reading copy (white)
Color

A BILL FOR AN ACT ENTITLED: "AN ACT TO EXEMPT CERTAIN CONDOMINIUMS FROM THE MONTANA SUBDIVISION AND PLATTING ACT; TO INCLUDE ALL CONDOMINIUMS UNDER THE SANITATION IN SUBDIVISIONS ACT; AMENDING SECTIONS 76-3-203, 76-3-301, 76-4-111, AND 76-4-122, MCA."

Respectfully report as follows: That **HOUSE** Bill No. **770**

be amended as follows:

1. Page 3, line 5.

Strike: "Condominiums"

Insert: "(1) Except as provided in subsections (2) and (3); condominiums"

2. Page 3.

Following, line 11

Insert: "(2) Conversions of existing structures into condominiums are not subject to this part where the converted units are to be served by existing municipal water and sewer facilities in a Class I or II city as defined in 7-1-4111.

(3) Where the water or sewage disposal system in an existing building to be converted into condominiums has already been approved under either department requirements or has been approved by the local health department under local requirements, such water or sewage disposal system is not subject to this part.

XXXXXX AND AS AMENDED
DO PASS DO PASS

STANDING COMMITTEE REPORT

February 21, 19 83

MR. SPEAKER

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE Bill No. 825

First reading copy (white)
Color

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE EMINENT DOMAIN LAWS; AMENDING SECTIONS 70-30-101, 70-30-102, 70-30-110, 70-30-111, 70-30-201, THROUGH 70-30-203, 70-30-205, 70-30-207, 70-30-301, 70-30-302, 70-30-304, 70-30-308 THROUGH 70-30-310, AND 70-30-313, MCA; REPEALING SECTIONS 69-13-104, 70-30-104, 70-30-204, 70-30-206, 7-30-305, 70-30-311, 70-30-321, 70-30-322, 82-2-201 THROUGH 82-2-212, 82-2-221 THROUGH 82-2-224, AND 82-10-301 THROUGH 82-10-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

HOUSE 825

Respectfully report as follows: That..... Bill No.....
be amended as follows:

1. Title, line 5.

Following: "SECTIONS"

Strike: line 5 through "DATE" on line 12

Insert: 70-30-101, 70-30-102, 70-30-201, 70-30-202, 70-30-203, 70-30-206, 70-30-207, 70-30-308, 70-30-309, 70-30-311, 70-30-313, MCA; repealing sections 70-30-204 AND 70-30-205, MCA."

2. Page 1 through page 25.

Strike: all of the bill following the Title

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

Section 1. Section 70-30-104, MCA, is amended to read:

"70-30-104. What estates and rights in land may be taken. The following is a classification of the estates and rights in land subject to be taken for the public use:

(1) such estate or rights as may be necessary up to and including a fee simple when taken for public buildings or grounds or for

DO PASS

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permanent buildings or for an outlet for a flow or a place for the deposit of debris or tailings of a mine or for the mining and extracting of ores, metals, or minerals when the same are owned by the plaintiff but located beneath or upon the surface of property where the title to said surface vests in others or for the underground storage of natural gas by a natural gas public utility as defined in 82-10-301. When the appropriation is for the underground storage of natural gas, all of the right, title, interest, and estate in the real property and in the suband stratum, formation, or reservoir so appropriated shall be determinable and for all purposes terminate upon abandonment or upon cessation for the period of 1 year of the use for which the same was appropriated, and thereupon the ownership of the residue of natural gas therein remaining shall likewise vest in the then owners of such reservoir space.

(2) such estate or rights in the surface as are necessary for a reservoir or dam and for the permanent flooding that results, up to the edge of the maximum pool of the reservoir;

(3) an easement, leasehold, or license, for so long as the interest is necessary for the purpose described in the complaint, or fee simple when taken for any other use;

(4) the right of entry upon and occupation of land and the right to take therefrom such earth, gravel, stones, trees, and timber as may be necessary for some public use."

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

"70-30-111. Facts necessary to be found before condemnation. Before property can be taken, it must appear:

(1) that the use to which it is to be applied is a use authorized by law

(2) that the taking is necessary to such use;

(3) if already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use;

(4) that a reasonable effort to purchase the property was sought and a written offer was made and rejected; and

(5) that the public interest requires the taking."

Section 3. Section 70-30-201, MCA, is amended to read:

"70-30-201. Applicable rules of practice. Except as otherwise provided in this chapter, the provisions of titles 25 and 26, including

the Montana Rules of Civil Procedure and the Montana Rules of Evidence are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter."

Section 4. Section 70-30-202, MCA, is amended to read:

"70-30-202. Jurisdiction and venue -- complaint and summons required. All proceedings under this chapter must be brought in the

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Chairman.

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district court of the county in which the property or some part thereof is situated. They must be commenced by filing a complaint and issuing a summons thereon. A summons served under this chapter must contain a notice to the defendant to file and serve an answer to the issue of public necessity and to appear and show cause at a time and place specified therein why the property described should not be condemned as prayed for in the complaint.

Section 5. Section 70-30-203, MCA, is amended to read:

*70-30-203. Contents of complaint. The complaint must contain allege :

(1) the name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiff;

(2) the names of all owners, mortgagees, and lienholders of record and any other claimants of the property of record, if known, or a statement that they are unknown, who must be styled defendants;

(3) a statement of the right of plaintiff;

(4) statements of each of the facts necessary to be found in 70-30-111;

~~(4)~~ (5) if a right-of-way is sought, the complaint must show the location, general route, and termini and must be accompanied with a map thereof, so far as the same is involved in the action or proceeding;

~~(5)~~ (6) a description of each piece-of-land interest in real property sought to be taken and whether the same includes the whole or only a part of the entire parcel or tract. All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties. ~~When application for the condemnation of a right-of-way for the purposes of sewerage is made on behalf of a settlement or a town or a county, the county commissioners of the county may be named as plaintiff.~~

~~(6)~~ (7) if a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir is sought to be appropriated, a description thereof and of the land in which it is alleged to be contained and a description of all other property and rights sought to be appropriated for use in connection with the appropriation of the right to store natural gas in and withdraw natural gas from such reservoir. In addition, the complaint shall state facts showing that the underground reservoir is one subject to appropriation by plaintiff; also stating that the underground storage of natural gas in the land sought to be appropriated is in the public interest; that the underground reservoir is suitable and practicable for natural gas storage; that the plaintiff in good faith has been unable to acquire the rights sought to be

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appropriated hereunder and a statement that the rights and property sought to be appropriated are not prohibited by law; and in addition, the complaint must be accompanied by a certificate from the board of oil and gas conservation as set forth in 82-10-304."

Section 6. Section 70-30-206, MCA, is amended to read:

"70-30-206. Powers of court -- preliminary condemnation order. (1) The court or judge has power to:

(a) regulate and determine the place and manner of making the connections and crossings and enjoying the common uses mentioned in 70-30-103(1)(a) and of the occupying of canyons, passes, and defiles for railroad purposes, as permitted and regulated by the laws of this state or of the United States; or

~~(b) determine whether or not the use for which the property is sought to be appropriated is a public use within the meaning of the laws of this state~~ limit the interest in real property sought to be appropriated if in the opinion of the court the interest sought is not necessary.

~~(c) limit the amount of property sought to be appropriated if in the opinion of the court or judge the quantity sought to be appropriated is not necessary.~~

(2) If the court or judge is satisfied from the evidence presented at the hearing provided for in 70-30-304 that the public interests requires the taking of such lands interest in real property and that the facts necessary to be found before condemnation appear, it or he must forthwith make and enter a preliminary condemnation order that the condemnation of the land or other interest in real property may proceed in accordance with the provisions of this chapter.

(3) If the property sought to be appropriated is a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir and the existence and suitability of it for such use has been proved by plaintiff upon substantial evidence, the order of the court or judge shall direct the commissioners to ascertain and determine the amount to be paid by the plaintiff to each person for his interest in the property sought to be appropriated for use as such underground natural gas storage reservoir and/or as the annual rental for the use of such underground gas storage reservoir and for the use of so much of the surface as is required in the operation of the underground gas storage reservoir and for the use in connection with the creation, operation, and maintenance thereof and for all the native gas contained in said reservoir as compensation and damages by reason of the appropriation of such property. However, the amount to be paid for such native gas and all thereof shall be no less than the market value of such gas. The court shall appoint three persons, qualified as experts and recommended as such by the board of oil and gas conservation, to assist and advise the commissioners in determining the compensation and damages to be paid by plaintiff to each person for his interest in the property sought to be appropriated, and the fees and expenses of such persons shall be chargeable as costs of the proceedings to be paid by the plaintiff."

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Section 7. Section 70-30-207, MCA, is amended to read:

"70-30-207. Appointment of commissioners -- qualifications -- affidavit. (1) ~~Immediately upon making and entering the preliminary condemnation order, the judge must meet with the respective parties or their attorneys of record for the purpose of appointing condemnation commissioners to ascertain and determine the amount to be paid by the plaintiff to each owner or other persons interested in such property by reason of the appropriation of such property. The appointment of~~ Within 10 days of entry of a preliminary condemnation order, the defendant shall file a statement of his claim of just compensation. If within 20 days of service of defendant's claim plaintiff fails to accept the claim, the court

must appoint condemnation commissioners and the commission hearing may be waived by written consent of both parties, in which case the proceeding shall be conducted in the district court as if the case had been appealed from an award by such commissioners.

(2) The court must thereupon appoint three qualified, disinterested condemnation commissioners, unless appointment has been waived. One of such commissioners shall be nominated by the party or parties plaintiff. One of such commissioners shall be nominated by the party or parties defendant. The third commissioner shall be the chairman and shall be nominated by the two commissioners previously nominated. However, if said two commissioners fail to make such choice at the time of their appointment, then such nomination shall be made by the presiding judge.

(3) Each commissioner shall possess the following qualifications:

- (a) a citizen of the United States and over 18 years of age;
- (b) that he is not more than 70 years of age;
- (c) that he is in possession of natural faculties, of ordinary intelligence, and not decrepit;
- (d) that he is possessed of sufficient knowledge of the English language;

(e) that he was assessed on the last assessment roll of a county within the judicial district in which the action is pending;

(f) that he has not been convicted of malfeasance in office or any felony or other high crime;

(g) that he is not related within the sixth degree to any party;

(h) that he does not stand in the relation of guardian and ward, master and servant, debtor and creditor, or principal and agent or partner or surety as to any party.

(4) At the time of such meeting and nominations, there shall be filed with the court by each nominating party or judge an affidavit of the person so nominated stating substantially as follows:

(a) that he has formed no unqualified opinion or belief as to the compensation to be awarded in the proceeding or as to the fairness or unfairness of the plaintiff's offer for the lands and improvements of the defendants;

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(b) that he has no enmity against or bias in favor of any party and has not discussed, communicated, or overheard or read any discussion or communication from any party relating to values of the lands in question or the compensation offered, demanded, or to be awarded;

(c) that if selected as a condemnation commissioner, he is willing to serve and will well and truly try the issues of compensation and render a true decision according to the evidence and in compliance with the instructions of the court;

(d) that he will not discuss the case with anyone except the other commissioners until a decision has been filed with the court.

Section 8. Section 70-30-308, MCA, is amended to read:

"70-30-308. How payment made -- execution or installment for nonpayment. (1) Payment may be made to the defendants entitled thereto, or the money may be deposited in court for the defendants and be distributed to those entitled thereto. However, at the option of the defendants, payments may be made:

(a) ~~if a fee simple interest in the defendant's land is taken, on an annual basis, utilizing the installment contract method; or~~

(b) if other land is reasonably available and the plaintiff consents, by means of a land exchange between the defendants and plaintiffs if the land to be provided by the plaintiffs in the exchange is of equal or more value than the land being condemned; or

~~(c) if an easement over or through the defendants' property is involved, in either a single payment or in not more than five consecutive annual installments;~~

(2) If the money be not so paid or deposited, the defendants may have execution as in civil cases, and if the money cannot be made on execution, the court or judge, upon a showing to that effect, must set aside and annul the entire proceedings and restore possession of the property to the defendant if possession has been taken by the plaintiff."

Section 9. 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 given, if the plaintiff elects to give one, as required by 70-30-307 and 70-30-308, the court or judge must make a final order of condemnation, which must describe the property condemned and the purposes of such condemnation.

(2) A copy of the order must be filed in the office of the county clerk and recorder, and thereupon the property described therein shall vest in the plaintiff for the purposes therein specified."

Section 10. Section 70-30-311, MCA, is amended to read:

"70-30-311. Putting plaintiff in possession. (1) At any time after the filing of the preliminary condemnation order or after the report and

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assessment of the commissioners have been made and filed in the court and either before or after appeal from such assessment or from any other order or judgment in the proceedings, the court or any judge thereof at chambers upon application of the plaintiff shall have power to make an order that, upon payment into court for the defendant entitled thereto of the amount of compensation claimed by the defendant in his answer under 70-30-207 or the amount assessed either by the commissioners or by the jury, as the case may be, the plaintiff be authorized:

(a) if already in possession of the property of such defendant sought to be appropriated, to continue in such possession; or

(b) if not in possession, to take possession of such property and use and possess the same during the pendency and until the final conclusion of the proceedings and litigation and that all actions and proceedings against the plaintiff on account thereof be stayed until such time.

(2) However, where an appeal is taken by such defendant, the court or judge may, in its or his discretion, require the plaintiff before continuing or taking such possession, in addition to paying into court the amount assessed, to give bond or undertaking with sufficient sureties to be approved by the judge court and to be in such sum as the court or judge may direct, conditioned to pay the defendant any additional damages and costs over and above the amount assessed, which it may finally be determined that defendant is entitled to for the appropriation of the property, and all damages which defendant may sustain if for any cause such property shall not be finally taken for public uses.

(3) The amount assessed by the commissioners or by the jury on appeal, as the case may be, shall be taken and considered, for the purposes of this section, until reassessed or changed in the further proceedings, as just compensation for the property appropriated; but the plaintiff, by payment into court of the amount claimed in the answer or the amount assessed or by giving security as above provided, shall not be thereby prevented or precluded from appealing from such assessment but may appeal in the same manner and with the same effect as if no money had been deposited or security given. In all cases where the plaintiff deposits the amount of the assessment and continues in possession or takes possession of the property, as herein provided, the defendant entitled thereto, if there be 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 so deposited and shall not by such demand or receipt be barred or precluded from his right of appeal from such assessment but may, notwithstanding, take and prosecute his appeal from such assessment; provided that if the amount of such assessment is finally reduced on appeal by either party, such defendant who has received all or any part of the amount deposited shall be liable to the plaintiff for any excess of the amount so received by him over the amount finally assessed,

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with legal interest on such excess from the time such defendant received the money deposited, and the same may be recovered by action; and provided, further, that upon any appeal from assessment by the commissioners to a jury, the jury may find a less as well as an equal or greater amount than that assessed by the commissioners; and provided, further, that the court shall not order the delivery to any defendant of more than 75% of the money deposited on his account except upon posting of bond by such defendant equal to the amount in excess of 75%, with sureties to be approved by the court, to repay to the plaintiff such amounts withdrawn as are in excess of his final award in the proceedings.

Section 11. Section 70-30-313, MCA, is amended to read:

*70-30-313. Current fair market value. Current fair market value is the price that would be agreed to by a willing and informed seller and buyer, taking into consideration, but not limited to, the following factors:

(1) the highest and best reasonably available use of the property and its value for such use and its value for such use, provided current use may not be presumed to be the highest and best use;

(2) the machinery, equipment, and fixtures forming part of the real estate taken; and

(3) any other relevant factors as to which evidence is offered.

Section 12. Repealer. Sections 70-30-204 and 70-30-205, MCA, are repealed.

Section 13. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun prior to the effective date of this act.

AND AS AMENDED

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