

1 **VINCENT**
 2 *Harper* *Bentley* *House* *Bill No. 684* *John K. Howard*
 3 *Wolfe* *Palmer* *Johnson*
 4 *Triguera* *Henderson* *Leater* *Suebeck* *Thomas* *Jetty*
 5 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO EMINENT
 6 DOMAIN LAWS; PROVIDING A MORE FAIR AND EQUITABLE METHOD OF
 7 TREATING THE DEFENDANT PROPERTY OWNER IN SUCH PROCEEDINGS
 8 AMENDING SECTIONS 93-9901, 93-9908, 93-9910, 93-9912,
 9 93-9913, 93-9917, AND 93-9920, R.C.M. 1947."
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 11 Section 1. Section 93-9901, R.C.M. 1947, is amended to
 12 read as follows:
 13 "93-9901. Eminent domain defined. Eminent domain is
 14 the right privilege of the state to take private property
 15 for public use. This right privilege may be exercised in
 16 the manner provided in this chapter."
 17 Section 2. Section 93-9908, R.C.M. 1947, is amended to
 18 read as follows:
 19 "93-9908. The complaint and its contents. The
 20 complaint must contain:
 21 1. The name of the corporation, association,
 22 commission, or person in charge of the public use for which
 23 the property is sought, who must be styled plaintiff.
 24 2. The names of all owners, mortgagees and lienholders
 25 of record and any other claimants of the property of record,

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FABER
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Basch
Wagon
Wings

1 if known, or a statement that they are unknown, who must be
 2 styled defendants.
 3 3. A statement of the right privilege of plaintiff.
 4 4. If a right of way is sought, the complaint must show
 5 the location, general route, and termini, and must be
 6 accompanied with a map thereof, so far as the same is
 7 involved in the action or proceeding.
 8 5. A description of each piece of land sought to be
 9 taken, and whether the same includes the whole or only a
 10 part of the entire parcel or tract. All parcels lying in
 11 the county, and required for the same public use, may be
 12 included in the same or separate proceedings, at the option
 13 of the plaintiff, but the court may consolidate or separate
 14 them to suit the convenience of the parties. When
 15 application for the condemnation of a right of way for the
 16 purposes of sewerage is made on behalf of a settlement, or
 17 town, or a county, the county commissioners of the county
 18 may be named as plaintiff.
 19 6. If a sand, stratum or formation suitable for use as
 20 an underground natural gas storage reservoir is sought to be
 21 appropriated, a description thereof and of the land in which
 22 it is alleged to be contained, and a description of all
 23 other property and rights sought to be appropriated for use
 24 in connection with the appropriation of the right to store
 25 natural gas in and withdraw natural gas from such reservoir.

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1 In addition, the complaint shall state facts showing that
 2 the underground reservoir is one subject to appropriation by
 3 plaintiff; also stating that the underground storage of
 4 natural gas in the land sought to be appropriated is in the
 5 public interest; that the underground reservoir is suitable
 6 and practicable for natural gas storage; that the plaintiff
 7 in good faith has been unable to acquire the rights sought
 8 to be appropriated hereunder and a statement that the rights
 9 and property sought to be appropriated are not prohibited by
 10 law; and in addition, the complaint must be accompanied by a
 11 certificate from the board of oil and gas conservation as
 12 set forth in section 60-804."

13 Section 3. Section 93-9910, R.C.M. 1947, is amended to
 14 read as follows:

15 "93-9910. Who may defend--answer of defendant. All
 16 persons named in the complaint, in occupation of, or
 17 claiming an interest in, any of the property described in
 18 the complaint, or in the amount to be awarded for the taking
 19 thereof, though not named, may appear. The answer of each
 20 appearing defendant must be filed and served upon the
 21 plaintiff, or upon any attorney for plaintiff, within a
 22 period of ~~fifteen-(15)~~ twenty (20) days after the service of
 23 summons and complaint. The answer of each appearing
 24 defendant must contain a specific allegation as to the total
 25 amount which such defendant claims is reasonable and just

1 for the taking of such defendant's lands or other real
 2 property or interest therein."

3 Section 4. Section 93-9912, R.C.M. 1947, is amended to
 4 read as follows:

5 "93-9912. Appointment and meeting of commissioners.
 6 Immediately upon making and entering the preliminary
 7 condemnation order the judge must meet with the respective
 8 parties, or their attorneys of record, for the purpose of
 9 appointing condemnation commissioners to ascertain and
 10 determine the amount to be paid by the plaintiff to each
 11 owner or other persons interested in such property by reason
 12 of the appropriation of such property. The court must
 13 thereupon appoint three (3) qualified, disinterested
 14 condemnation commissioners. One of such commissioners shall
 15 be nominated by the party or parties plaintiff; one of such
 16 commissioners shall be nominated by the party or parties
 17 defendant. The third commissioner shall be the chairman and
 18 shall be nominated by the two (2) commissioners previously
 19 nominated, provided, however, that if said two (2)
 20 commissioners fail to make such choice at the time of their
 21 appointment, then such nomination shall be made by the
 22 presiding judge. Each commissioner shall possess the
 23 following qualifications: a citizen of the United States and
 24 over eighteen (18) years of age; that he is not more than
 25 seventy (70) years of age; that he is in possession of

1 natural faculties, of ordinary intelligence and not
 2 decrepit; that he is possessed of sufficient knowledge of
 3 the English language; that he was assessed on the last
 4 assessment roll of a county within the judicial district in
 5 which the action is pending; that he has not been convicted
 6 of malfeasance in office, or any felony or other high crime;
 7 that he is not related within the sixth degree to any party;
 8 that he does not stand in the relation of guardian and ward,
 9 master and servant, debtor and creditor, or principal and
 10 agent, or partner or surety as to any party. At the time of
 11 such meeting and nominations there shall be filed with the
 12 court by each nominating party or judge an affidavit of the
 13 person so nominated stating substantially as follows: that
 14 he has formed no unqualified opinion or belief as to the
 15 compensation to be awarded in the proceeding or as to the
 16 fairness or unfairness of the plaintiff's offer for the
 17 lands and improvements of the defendants; and that he has no
 18 enmity against or bias in favor of any party and has not
 19 discussed, communicated or overheard or read any discussion
 20 or communication from any party relating to values of the
 21 lands in question or the compensation offered, demanded or
 22 to be awarded; that if selected as a condemnation
 23 commissioner he is willing to serve and will well and truly
 24 try the issues of compensation and a true decision render
 25 according to the evidence and in compliance with the

1 instructions of the court; that he will not discuss the case
 2 with anyone except the other commissioners until a decision
 3 has been filed with the court.

4 Immediately upon such nomination and appointment of
 5 commissioners the same shall proceed to meet at the time and
 6 place stated in the order appointing them, which time shall
 7 be not more than ten (10) days after the order of
 8 appointing, and proceed to examine the lands sought to be
 9 appropriated. At a time appointed by the judge and within
 10 said ten (10) day period they shall hear the allegations and
 11 evidence of all persons interested in each of the several
 12 parcels of land. Such hearing shall be attended by, and
 13 presided over by, the presiding judge who shall make all
 14 necessary rulings upon procedure and the admissibility of
 15 evidence. At the conclusion of the aforesaid hearing, the
 16 court or judge shall instruct the commissioners as to the
 17 law applicable to their deliberations and shall instruct
 18 them that their duty is to determine, solely upon the basis
 19 of said examination of lands, the evidence produced at the
 20 hearing or hearings and the instructions of the court, the
 21 following:

22 1. The value of the property sought to be appropriated
 23 and all improvements thereon pertaining to the realty, and
 24 of each and every separate estate and interest therein; if
 25 it consist of different parcels, the value of each parcel

1 and each estate or interest therein must be separately
2 assessed.

3 2. If the property sought to be appropriated
4 constitutes only a part of a larger parcel, the depreciation
5 in value which will accrue to the portion not sought to be
6 condemned, by reason of its severance from the portion
7 sought to be condemned, and the construction of the
8 improvements in the manner proposed by the plaintiff.

9 ~~3. Separately, how much the portion not sought to be
10 condemned and each estate or interest therein, will be
11 benefited, if at all, by the construction of the
12 improvements proposed by the plaintiff, and if the benefit
13 shall be equal to the amount assessed under subdivision 2,
14 the owner of the parcel shall be allowed no compensation
15 except the value of the portion taken, but if the benefits
16 shall be less than the amount assessed under subdivision 2,
17 the former shall be deducted from the latter, and the
18 remainder shall be the only amount allowed in addition to
19 the value.~~

20 4 3. If the property sought to be condemned be for a
21 railroad, the cost of good and sufficient fences along the
22 line of such railroad, and the cost of cattle guards where
23 fences may cross the line of such railroad.

24 5 4. Where there are two (2) or more estates or divided
25 interests in property sought to be condemned, the plaintiff

1 is entitled to have the amount of the award, for said
2 property first determined, as hereinbefore stated, as
3 between plaintiff and all defendants claiming any interests
4 therein; thereafter in the same proceeding the respective
5 rights of each of such defendants in and to the award shall
6 be determined by the commissioners, under supervision and
7 instruction of the court, and the award apportioned
8 accordingly."

9 Section 5. Section 93-9913, R.C.M. 1947, is amended to
10 read as follows:

11 "93-9913. The date with respect to which compensation
12 shall be assessed. For the purpose of assessing compensation
13 the right thereto shall be deemed to have accrued at the
14 date of the service of the summons, and its actual value as
15 of that date shall be the measure of compensation for all
16 property to be actually taken, and the basis of depreciation
17 in value of property not actually taken, but injuriously
18 affected. This shall not be construed to limit the amount of
19 compensation payable by the department of highways under the
20 provisions of any legislation enacted pursuant to the
21 Federal Highway Beautification Act of 1965. If an order be
22 made letting the plaintiff into possession, as provided in
23 section 93-9920, the full amount finally awarded shall draw
24 the highest lawful interest from the date on which the
25 property owner surrenders possession of the property in

1 accordance with the terms of such order to ~~the earlier of~~
 2 ~~the following dates:~~

3 ~~(a) The date on which the right to appeal to the~~
 4 ~~Montana supreme court expires, or if appeal is filed, to the~~
 5 ~~date of final decision by the supreme court, or~~

6 ~~(b) The~~ the date on which the property owner withdraws
 7 from court the full amount finally awarded.

8 If the property owner withdraws from court a fraction
 9 of the amount finally awarded, interest on such fraction
 10 shall cease on the date it is withdrawn but interest on the
 11 remainder of the amount finally awarded shall continue ~~to~~
 12 ~~the earlier of the aforesaid dates defined in (a) and (b) of~~
 13 ~~this section~~ until the full amount is withdrawn from the
 14 court. ~~None of the amount finally awarded shall draw~~
 15 ~~interest after the date on which the right to appeal to the~~
 16 ~~Montana supreme court expires.~~ No improvements put upon the
 17 property, subsequent to the date of the service of summons,
 18 shall be included in the assessment of compensation or
 19 depreciation in value, nor shall the same be used as the
 20 basis of computing such compensation or depreciation."

21 Section 6. Section 93-9917, R.C.M. 1947, is amended to
 22 read as follows:

23 "93-9917. Payment of damages or deposit of bond
 24 therefor. The plaintiff must, within thirty days after final
 25 judgment, pay the sum of money assessed, but may, at the

1 ~~time of or before the payment, elect to build the fences and~~
 2 ~~cattle guards, and if he so elect, shall execute to the~~
 3 ~~defendant a bond, with sureties to be approved by the court,~~
 4 ~~in double the assessed cost of the same, to build such~~
 5 ~~fences and cattle guards within eight months from the time~~
 6 ~~the railroad is built on the land taken, and, if such bond~~
 7 ~~be given, need not pay the cost of such fences and cattle~~
 8 ~~guards. In an action on such bond, the plaintiff may recover~~
 9 ~~reasonable attorney's fees. All fences and cattle guards~~
 10 ~~shall be built and maintained by plaintiff at his own~~
 11 ~~expense. Damage occurring to any person or property that~~
 12 ~~results from plaintiff's failure to comply with this section~~
 13 ~~shall be paid by plaintiff to the injured person, or owner~~
 14 ~~of the damaged property."~~

15 Section 7. Section 93-9920, R.C.M. 1947, is amended to
 16 read as follows:

17 "93-9920. Putting plaintiff in possession. ~~At any time~~
 18 ~~after the filing of the preliminary condemnation order or~~
 19 ~~after the report and assessment of the commissioners have~~
 20 ~~been made and filed in the court, and either before or after~~
 21 ~~appeal from such assessment, or from any other order or~~
 22 ~~judgment in the proceedings, the court or any judge thereof~~
 23 ~~at chambers, upon application of the plaintiff, shall have~~
 24 ~~power to make an order that upon payment into court for the~~
 25 ~~defendant entitled thereto of the amount of compensation~~

1 claimed by the defendant in his answer or the amount
 2 assessed, either by the commissioners or by the jury, as the
 3 case may be, the plaintiff be authorized, if already in
 4 possession of the property of such defendant sought to be
 5 appropriated to continue in such possession, or, if not in
 6 possession, that the plaintiff be authorized to take
 7 possession of such property and use and possess the same
 8 during the pendency and until the final conclusion of the
 9 proceedings and litigation, and that all actions and
 10 proceedings against the plaintiff on account thereof be
 11 stayed until such time, provided, however, that where an
 12 appeal is taken by such defendant, the court or judge may,
 13 in its or his discretion, require the plaintiff, before
 14 continuing or taking such possession, in addition to paying
 15 into court the amount assessed, to give bond or undertaking,
 16 with sufficient sureties, to be approved by the judge and to
 17 be in such sum as the court or judge may direct, conditioned
 18 to pay the defendant any additional damages and costs over
 19 and above the amount assessed, which it may finally be
 20 determined that defendant is entitled to for the
 21 appropriation of the property, and all damages which
 22 defendant may sustain if for any cause such property shall
 23 not be finally taken for public uses.

24 The amount assessed by the commissioners, or by the
 25 jury on appeal, as the case may be, shall be taken and

1 considered, for the purposes of this section, until
 2 reassessed or changed in the further proceedings, as just
 3 compensation for the property appropriated, but the
 4 plaintiff, by payment into court of the amount claimed in
 5 the answer or the amount assessed, or by giving security as
 6 above provided, shall not be thereby prevented or precluded
 7 from appealing from such assessment, but may appeal in the
 8 same manner and with the same effect as if no money had been
 9 deposited or security given, and in all cases where the
 10 plaintiff deposits the amount of the assessment and
 11 continues in possession, or takes possession of the
 12 property, as herein provided, the defendant entitled
 13 thereto, if there be no dispute as to the ownership of the
 14 property, may at any time demand and receive upon order of
 15 the court, all or any part of the money so deposited, and
 16 shall not by such demand or receipt be barred or precluded
 17 from his right of appeal from such assessment, but may,
 18 notwithstanding, take and prosecute his appeal from such
 19 assessment, provided, that if the amount of such assessment
 20 is finally reduced on appeal by either party, such defendant
 21 who has received all or any part of the amount deposited
 22 shall be liable to the plaintiff for any excess of the
 23 amount so received by him over the amount finally assessed,
 24 with legal interest on such excess from the time such
 25 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--seventy-five (75)--per cent--of--the
 money deposited on his account except upon posting--of--bond
 by--such--defendant--equal--to--the--amount--in--excess--of
 seventy-five (75)--per cent, 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.
 Plaintiff shall not be put in possession until final
 determination of value of condemnation is made and defendant
 is paid in full, including all expenses of litigation.
 Litigation expenses for both parties shall be paid by
 plaintiff. Defendant is entitled to payment for each day
 spent in court in an amount equal to the daily rate of the
 highest paid person in plaintiff's organization."~~

Section 8. There is a new R.C.M. section numbered 93-9945 that reads as follows:

93-9945. Property damage. All claims for damage, to property of defendant or defendant's agents, tenants, lessees, or other persons with an interest in defendant's property by plaintiff or plaintiff's agents or contractors, shall be paid in full before plaintiff may utilize the

condemned property for any use. Interest, at the rate of one and one-half percent (1 1/2%) per month, shall accrue to the damaged party from thirty (30) days after the date of damage.

Section 9. There is a new R.C.M. section numbered 93-9946 that reads as follows:

93-9946. Future damage to defendant's adjacent property. Plaintiff is liable to defendant for damage to defendant's real or personal property which occurs as the result of an action by plaintiff, or an agent, contractor or servant of plaintiff in utilizing the condemned land.

Section 10. There is a new R.C.M. section numbered 93-9947 that reads as follows:

93-9947. Other persons entitled to compensation. A person, not defendant, owning property within a reasonable distance of the property condemned under eminent domain who suffers damages to realty or personalty as a result of plaintiff's use of the condemned property is entitled to compensation for that damage.

Section 11. There is a new R.C.M. section numbered 93-9948 that reads as follows:

93-9948. Nonliability. The owner of condemned property, his agents and assigns are not liable at any time for their acts which result in damage to the condemning parties' property unless those acts are willful, wanton, or

1 intentional.

-End-

Reported back from Committee without recommendation, as amended.

HOUSE BILL NO. 684

INTRODUCED BY WOLFE, PALMER, JACOBSEN, UNDERDAL, VINCENT,
 JACK MOORE, HARPER, BERTELSEN, GUNDERSON, LESTER, LUEBECK,
 THOMAS, SOUTH, SLOAN, SHELDEN, HAGEMAN, FLEMING, FEDERICO,
 MELOY, JOHNSON, JAMES MOORE, ELLIS, FISHBAUGH, TRAVIS,
 STOLTZ, DUSSAULT, TROPILA, HALVORSON, FINLEY,
 STAIGMILLER, DRISCOLL, TEAGUE, KEMMIS, BRAND, MANUEL, FAGG,
 WILLIAMS, HELMBRECHT, R. BAETH, MAGONE, DASSINGER

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO EMINENT
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 4 other property and rights sought to be appropriated for use
 5 in connection with the appropriation of the right to store
 6 natural gas in and withdraw natural gas from such reservoir.
 7 In addition, the complaint shall state facts showing that
 8 the underground reservoir is one subject to appropriation by
 9 plaintiff; also stating that the underground storage of
 10 natural gas in the land sought to be appropriated is in the
 11 public interest; that the underground reservoir is suitable
 12 and practicable for natural gas storage; that the plaintiff
 13 in good faith has been unable to acquire the rights sought
 14 to be appropriated hereunder and a statement that the rights
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 16 law; and in addition, the complaint must be accompanied by a
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 25 thereof, though not named, may appear. The answer of each

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 2 plaintiff, or upon any attorney for plaintiff, within a
 3 period of ~~fifteen-(15)~~ ~~twenty-(20)~~ FIFTEEN (15) days after
 4 the service of summons and complaint. The answer of each
 5 appearing defendant must contain a specific allegation as to
 6 the total amount which such defendant claims is reasonable
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 25 nominated, provided, however, that if said two (2)

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 15 master and servant, debtor and creditor, or principal and
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 19 person so nominated stating substantially as follows: that
 20 he has formed no unqualified opinion or belief as to the
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 6 (1 1/2%) PER MONTH interest from the date on which the
 7 property owner surrenders possession of the property in
 8 accordance with the terms of such order to ~~the earlier of~~
 9 ~~the following dates:~~

10 ~~(a) The date on which the right to appeal to the~~
 11 ~~Montana supreme court expires, or if appeal is filed, to the~~
 12 ~~date of final decision by the supreme court, or~~

13 ~~(b) The the date on which the property owner withdraws~~
 14 ~~from court the full amount finally awarded~~ IS AVAILABLE IN
 15 THE COURT TO BE WITHDRAWN BY THE DEFENDANT.

16 If the property owner withdraws from court a fraction
 17 of the amount finally awarded, interest on such fraction
 18 shall cease on the date it is withdrawn but interest on the
 19 remainder of the amount finally awarded shall continue ~~to~~
 20 ~~the earlier of the aforesaid dates defined in (a) and (b) of~~
 21 ~~this section until the full amount is withdrawn~~ AVAILABLE
 22 FOR WITHDRAWAL from the court. ~~None of the amount finally~~
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 25 improvements put upon the property, subsequent to the date

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 3 shall the same be used as the basis of computing such
 4 compensation or depreciation."

5 Section 6. Section 93-9917, R.C.M. 1947, is amended to
 6 read as follows:

7 "93-9917. Payment of damages or deposit of bond
 8 therefor. The plaintiff must, within thirty days after final
 9 judgment, pay the sum of money assessed, ~~but may, at the~~
 10 ~~time of or before the payment, elect to build the fences and~~
 11 ~~cattle guards, and, if he so elect, shall execute to the~~
 12 ~~defendant a bond, with sureties to be approved by the court,~~
 13 ~~in double the assessed cost of the same, to build such~~
 14 ~~fences and cattle guards within eight months from the time~~
 15 ~~the railroad is built on the land taken, and, if such bond~~
 16 ~~be given, need not pay the cost of such fences and cattle~~
 17 ~~guards. In an action on such bond, the plaintiff may recover~~
 18 ~~reasonable attorney's fees.~~ All fences and cattle guards
 19 NECESSITATED BY THE CONDEMNATION ACTION, shall be built AS
 20 SOON AS FEASIBLE, and maintained by plaintiff at his own
 21 expense. Damage occurring to any person or property that
 22 results from plaintiff's failure to comply with this section
 23 shall be paid by plaintiff to the injured person, or owner
 24 of the damaged property."

25 Section 7. Section 93-9920, R.C.M. 1947, is amended to

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 3 ~~after the filing of the preliminary condemnation order or~~
 4 ~~after the report and assessment of the commissioners have~~
 5 ~~been made and filed in the court, and either before or after~~
 6 ~~appeal from such assessment, or from any other order or~~
 7 ~~judgment in the proceedings, the court or any judge thereof~~
 8 ~~at chambers, upon application of the plaintiff, shall have~~
 9 ~~power to make an order that upon payment into court for the~~
 10 ~~defendant entitled thereto of the amount of compensation~~
 11 ~~claimed by the defendant in his answer or the amount~~
 12 ~~assessed, either by the commissioners or by the jury, as the~~
 13 ~~case may be, the plaintiff be authorized, if already in~~
 14 ~~possession of the property of such defendant sought to be~~
 15 ~~appropriated, to continue in such possession; or, if not in~~
 16 ~~possession, that the plaintiff be authorized to take~~
 17 ~~possession of such property and use and possess the same~~
 18 ~~during the pendency and until the final conclusion of the~~
 19 ~~proceedings and litigation, and that all actions and~~
 20 ~~proceedings against the plaintiff on account thereof be~~
 21 ~~stayed until such time; provided, however, that where an~~
 22 ~~appeal is taken by such defendant, the court or judge may,~~
 23 ~~in its or his discretion, require the plaintiff, before~~
 24 ~~continuing or taking such possession, in addition to paying~~
 25 ~~into court the amount assessed, to give bond or undertaking,~~

1 ~~with sufficient sureties, to be approved by the judge and to~~
 2 ~~be in such sum as the court or judge may direct, conditioned~~
 3 ~~to pay the defendant any additional damages and costs over~~
 4 ~~and above the amount assessed, which it may finally be~~
 5 ~~determined that defendant is entitled to for the~~
 6 ~~appropriation of the property, and all damages which~~
 7 ~~defendant may sustain if for any cause such property shall~~
 8 ~~not be finally taken for public uses.~~

9 ~~The amount assessed by the commissioners, or by the~~
 10 ~~jury on appeal, as the case may be, shall be taken and~~
 11 ~~considered, for the purposes of this section, until~~
 12 ~~reassessed or changed in the further proceedings, as just~~
 13 ~~compensation for the property appropriated; but the~~
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 16 ~~above provided, shall not be thereby prevented or precluded~~
 17 ~~from appealing from such assessment, but may appeal in the~~
 18 ~~same manner and with the same effect as if no money had been~~
 19 ~~deposited or security given; and in all cases where the~~
 20 ~~plaintiff deposits the amount of the assessment and~~
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 22 ~~property, as herein provided, the defendant entitled~~
 23 ~~thereto, if there be no dispute as to the ownership of the~~
 24 ~~property, may at any time demand and receive upon order of~~
 25 ~~the court, all or any part of the money so deposited, and~~

~~1 shall not by such demand or receipt be barred or precluded~~
~~2 from his right of appeal from such assessment, but may,~~
~~3 notwithstanding, take and prosecute his appeal from such~~
~~4 assessment; provided, that if the amount of such assessment~~
~~5 is finally reduced on appeal by either party, such defendant~~
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~~7 shall be liable to the plaintiff for any excess of the~~
~~8 amount so received by him over the amount finally assessed,~~
~~9 with legal interest on such excess from the time such~~
~~10 defendant received the money deposited, and the same may be~~
~~11 recovered by action; and, provided, further, that upon any~~
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~~17 money deposited on his account except upon posting of bond~~
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~~20 the court; to repay to the plaintiff such amounts withdrawn~~
~~21 as are in excess of his final award in the proceedings.~~
22 Plaintiff shall NEED not be put in possession until final
23 determination of value of condemnation is made and defendant
24 is paid in full, including all expenses of litigation.
25 Litigation expenses for both parties shall be paid by

1 plaintiff. Defendant is entitled to payment for each day
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3 highest paid person in plaintiff's organization."

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 9 property by plaintiff or plaintiff's agents or contractors,
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 11 condemned property for any use. Interest, at the rate of
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5 compensation for that damage.

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9 TO condemned property, his agents and assigns are not liable
10 at any time for their acts which result in damage to the
11 condemning parties' property unless those acts are willful,
12 wanton, or intentional.

-End-

1 HOUSE BILL NO. 684

2 INTRODUCED BY WOLFE, PALMER, JACOBSEN, UNDERDAL, VINCENT,
 3 JACK MOORE, HARPER, BERTELSEN, GUNDERSON, LESTER, LUEBECK,
 4 THOMAS, SOUTH, SLOAN, SHELDEN, HAGEMAN, FLEMING, FEDERICO,
 5 MELOY, JOHNSON, JAMES MOORE, ELLIS, FISHBAUGH, TRAVIS,
 6 STOLTZ, DUSSAULT, TROPILA, HALVORSON, FINLEY,
 7 STAICMILLER, DRISCOLL, TEAGUE, KEMNIS, BRAND, MANUEL, FAGG,
 8 WILLIAMS, HELMBRECHT, R. BAETH, MAGONE, DASSINGER

9
 10 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO EMINENT
 11 DOMAIN LAWS; PROVIDING A MORE FAIR AND EQUITABLE METHOD OF
 12 TREATING THE DEFENDANT PROPERTY OWNER IN SUCH PROCEEDINGS;
 13 AMENDING SECTIONS 93-9901, 93-9908, 93-9910, 93-9912,
 14 93-9913, 93-9917, AND 93-9920, R.C.M. 1947."

15
 16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 Section 1. Section 93-9901, R.C.M. 1947, is amended to
 18 read as follows:

19 "93-9901. Eminent domain defined. Eminent domain is
 20 the right privilege of the state to take private property
 21 for public use. This right privilege may be exercised in
 22 the manner provided in this chapter."

23 Section 2. Section 93-9908, R.C.M. 1947, is amended to
 24 read as follows:

25 "93-9908. The complaint and its contents. The

1 complaint must contain:

2 1. The name of the corporation, association,
 3 commission, or person in charge of the public use for which
 4 the property is sought, who must be styled plaintiff.

5 2. The names of all owners, mortgagees and lienholders
 6 of record and any other claimants of the property of record,
 7 if known, or a statement that they are unknown, who must be
 8 styled defendants.

9 3. A statement of the right privilege of plaintiff.

10 4. If a right of way is sought, the complaint must show
 11 the location, general route, and termini, and must be
 12 accompanied with a map thereof, so far as the same is
 13 involved in the action or proceeding.

14 5. A description of each piece of land sought to be
 15 taken, and whether the same includes the whole or only a
 16 part of the entire parcel or tract. All parcels lying in
 17 the county, and required for the same public use, may be
 18 included in the same or separate proceedings, at the option
 19 of the plaintiff, but the court may consolidate or separate
 20 them to suit the convenience of the parties. When
 21 application for the condemnation of a right of way for the
 22 purposes of sewerage is made on behalf of a settlement, or
 23 town, or a county, the county commissioners of the county
 24 may be named as plaintiff.

25 6. If a sand, stratum or formation suitable for use as

1 an underground natural gas storage reservoir is sought to be
 2 appropriated, a description thereof and of the land in which
 3 it is alleged to be contained, and a description of all
 4 other property and rights sought to be appropriated for use
 5 in connection with the appropriation of the right to store
 6 natural gas in and withdraw natural gas from such reservoir.
 7 In addition, the complaint shall state facts showing that
 8 the underground reservoir is one subject to appropriation by
 9 plaintiff; also stating that the underground storage of
 10 natural gas in the land sought to be appropriated is in the
 11 public interest; that the underground reservoir is suitable
 12 and practicable for natural gas storage; that the plaintiff
 13 in good faith has been unable to acquire the rights sought
 14 to be appropriated hereunder and a statement that the rights
 15 and property sought to be appropriated are not prohibited by
 16 law; and in addition, the complaint must be accompanied by a
 17 certificate from the board of oil and gas conservation as
 18 set forth in section 60-804."

19 Section 3. Section 93-9910, R.C.M. 1947, is amended to
 20 read as follows:

21 "93-9910. Who may defend--answer of defendant. All
 22 persons named in the complaint, in occupation of, or
 23 claiming an interest in, any of the property described in
 24 the complaint, or in the amount to be awarded for the taking
 25 thereof, though not named, may appear. The answer of each

1 appearing defendant must be filed and served upon the
 2 plaintiff, or upon any attorney for plaintiff, within a
 3 period of ~~fifteen-(15)~~ ~~twenty-(20)~~ FIFTEEN (15) days after
 4 the service of summons and complaint. The answer of each
 5 appearing defendant must contain a specific allegation as to
 6 the total amount which such defendant claims is reasonable
 7 and just for the taking of such defendant's lands or other
 8 real property or interest therein."

9 Section 4. Section 93-9912, R.C.M. 1947, is amended to
 10 read as follows:

11 "93-9912. Appointment and meeting of commissioners.
 12 Immediately upon making and entering the preliminary
 13 condemnation order the judge must meet with the respective
 14 parties, or their attorneys of record, for the purpose of
 15 appointing condemnation commissioners to ascertain and
 16 determine the amount to be paid by the plaintiff to each
 17 owner or other persons interested in such property by reason
 18 of the appropriation of such property. The court must
 19 thereupon appoint three (3) qualified, disinterested
 20 condemnation commissioners. One of such commissioners shall
 21 be nominated by the party or parties plaintiff; one of such
 22 commissioners shall be nominated by the party or parties
 23 defendant. The third commissioner shall be the chairman and
 24 shall be nominated by the two (2) commissioners previously
 25 nominated, provided, however, that if said two (2)

1 commissioners fail to make such choice at the time of their
 2 appointment, then such nomination shall be made by the
 3 presiding judge. Each commissioner shall possess the
 4 following qualifications: a citizen of the United States and
 5 over eighteen (18) years of age; that he is not more than
 6 seventy (70) years of age; that he is in possession of
 7 natural faculties, of ordinary intelligence and not
 8 decrepit; that he is possessed of sufficient knowledge of
 9 the English language; that he was assessed on the last
 10 assessment roll of a county within the judicial district in
 11 which the action is pending; that he has not been convicted
 12 of malfeasance in office, or any felony or other high crime;
 13 that he is not related within the sixth degree to any party;
 14 that he does not stand in the relation of guardian and ward,
 15 master and servant, debtor and creditor, or principal and
 16 agent, or partner or surety as to any party. At the time of
 17 such meeting and nominations there shall be filed with the
 18 court by each nominating party or judge an affidavit of the
 19 person so nominated stating substantially as follows: that
 20 he has formed no unqualified opinion or belief as to the
 21 compensation to be awarded in the proceeding or as to the
 22 fairness or unfairness of the plaintiff's offer for the
 23 lands and improvements of the defendants; and that he has no
 24 enmity against or bias in favor of any party and has not
 25 discussed, communicated or overheard or read any discussion

1 or communication from any party relating to values of the
 2 lands in question or the compensation offered, demanded or
 3 to be awarded; that if selected as a condemnation
 4 commissioner he is willing to serve and will well and truly
 5 try the issues of compensation and a true decision render
 6 according to the evidence and in compliance with the
 7 instructions of the court; that he will not discuss the case
 8 with anyone except the other commissioners until a decision
 9 has been filed with the court.

10 Immediately upon such nomination and appointment of
 11 commissioners the same shall proceed to meet at the time and
 12 place stated in the order appointing them, which time shall
 13 be not more than ten (10) days after the order of
 14 appointing, and proceed to examine the lands sought to be
 15 appropriated. At a time appointed by the judge and within
 16 said ten (10) day period they shall hear the allegations and
 17 evidence of all persons interested in each of the several
 18 parcels of land. Such hearing shall be attended by, and
 19 presided over by, the presiding judge who shall make all
 20 necessary rulings upon procedure and the admissibility of
 21 evidence. At the conclusion of the aforesaid hearing, the
 22 court or judge shall instruct the commissioners as to the
 23 law applicable to their deliberations and shall instruct
 24 them that their duty is to determine, solely upon the basis
 25 of said examination of lands, the evidence produced at the

1 hearing or hearings and the instructions of the court, the
2 following:

3 1. The value of the property sought to be appropriated
4 and all improvements thereon pertaining to the realty, and
5 of each and every separate estate and interest therein; if
6 it consist of different parcels, the value of each parcel
7 and each estate or interest therein must be separately
8 assessed.

9 2. If the property sought to be appropriated
10 constitutes only a part of a larger parcel, the depreciation
11 in value which will accrue to the portion not sought to be
12 condemned, by reason of its severance from the portion
13 sought to be condemned, and the construction of the
14 improvements in the manner proposed by the plaintiff.

15 ~~3. Separately, how much the portion not sought to be~~
16 ~~condemned, and each estate or interest therein, will be~~
17 ~~benefited, if at all, by the construction of the~~
18 ~~improvements proposed by the plaintiff, and if the benefit~~
19 ~~shall be equal to the amount assessed under subdivision 2,~~
20 ~~the owner of the parcel shall be allowed no compensation~~
21 ~~except the value of the portion taken, but if the benefits~~
22 ~~shall be less than the amount assessed under subdivision 2,~~
23 ~~the former shall be deducted from the latter, and the~~
24 ~~remainder shall be the only amount allowed in addition to~~
25 ~~the value.~~

1 4 3. If the property sought to be condemned be for a
2 railroad, the cost of good and sufficient fences along the
3 line of such railroad, and the cost of cattle guards where
4 fences may cross the line of such railroad.

5 5 4. Where there are two (2) or more estates or divided
6 interests in property sought to be condemned, the plaintiff
7 is entitled to have the amount of the award, for said
8 property first determined, as hereinbefore stated, as
9 between plaintiff and all defendants claiming any interests
10 therein; thereafter in the same proceeding the respective
11 rights of each of such defendants in and to the award shall
12 be determined by the commissioners, under supervision and
13 instruction of the court, and the award apportioned
14 accordingly."

15 Section 5. Section 93-9913, R.C.M. 1947, is amended to
16 read as follows:

17 "93-9913. The date with respect to which compensation
18 shall be assessed. For the purpose of assessing compensation
19 the right thereto shall be deemed to have accrued at the
20 date of the service of the summons, and its actual value as
21 of that date shall be the measure of compensation for all
22 property to be actually taken, and the basis of depreciation
23 in value of property not actually taken, but injuriously
24 affected. This shall not be construed to limit the amount of
25 compensation payable by the department of highways under the

1 provisions of any legislation enacted pursuant to the
 2 Federal Highway Beautification Act of 1965. If an order be
 3 made letting the plaintiff into possession, as provided in
 4 section 93-9920, the full amount finally awarded shall draw
 5 ~~the highest lawful~~ AT THE RATE OF ONE AND ONE-HALF PERCENT
 6 (1 1/2%) PER MONTH interest from the date on which the
 7 property owner surrenders possession of the property in
 8 accordance with the terms of such order to ~~the earlier of~~
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-End-

March 20, 1975

SENATE COMMITTEE ON BUSINESS AND INDUSTRY

AMENDMENTS TO HOUSE BILL NO. 684

That House Bill No. 684, third reading, be amended as follows:

1. Amend title, lines 10 through 14.
Following: "TO"
Strike: Lines 10 through 14 in their entirety
Insert: "interest paid in eminent domain proceedings; amending
Section 93-9913, R.C.M. 1947."
2. Amend page 1, section 1, lines 17 through line 14 on page 8.
Strike: Sections 1 through 4 in their entirety
Renumber: Subsequent section
3. Amend page 9, section 5, line 5.
Following: "~~lawful~~"
Strike: "AT THE RATE OF ONE AND ONE-HALF PERCENT (1 1/2%) PER MONTH"
Insert: "the highest lawful contract rate of"
4. Amend page 9, section 5, lines 8 and 9.
Following: "order to"
Insert: "the earlier of the following dates."
5. Amend page 9, section 5, line 10.
Following: line 9
Insert: "(a) The date on which the right to appeal to the
Montana supreme Court expires, or if appeal is filed,
to the date of final decision by the supreme court, or"
6. Amend page 9, section 5, line 13.
Following: line 12
Strike: "the"
Insert: "(b) The"
7. Amend page 9, section 5, line 13.
Following: "which"
Insert: "the property owner withdraws from court"
8. Amend page 9, section 5, lines 14 and 15.
Following: "awarded"
Strike: "IS AVAILABLE IN THE COURT TO BE WITHDRAWN BY THE
DEFENDANT"
9. Amend page 9, section 5, line 19.
Following: "continue"
Insert: "to the earlier of the aforesaid dates defined in (a)
and (b) of this section"

10. Amend page 9, section 5, line 21.
Following: "section"
Strike: "until the full amount is"
Insert: "withdrawn"
11. Amend page 9, section 5, lines 21 and 22.
Following: "withdrawn"
Strike: "AVAILABLE FOR WITHDRAWAL from the court"
12. Amend page 9, section 5, line 22.
Following: "court."
Insert: "None of the amount finally awarded shall draw interest after the date on which the right to appeal to the Montana supreme court expires."
13. Amend page 10, section 6, lines 5 through line 12 on page 15.
Strike: Sections 6 through 11 in their entirety

March 25, 1975

SENATE COMMITTEE OF THE WHOLE

AMENDMENTS TO HOUSE BILL NO. 684

That House Bill No. 684, Senate Committee on Business and Industry Amendments, dated March 20, 1975, be amended as follows:

1. Amend amendment No. 3.

Strike: Amendment No. 3 in its entirety

Amend third reading copy as follows:

2. Amend page 9, section 5, line 5.

Following: "~~lawful~~"

Strike: "AT THE RATE OF ONE AND ONE-HALF PERCENT (1-1/2%) PER MONTH"

Insert: "at the rate of ten percent (10%) per annum"

April 2, 1975

SENATE COMMITTEE OF THE WHOLE
AMENDMENTS TO HOUSE BILL NO. 684

That House Bill No. 684, third reading, be amended as follows:

1. Amend page 9, section 1, line 6.
Following: "draw"
Insert: "interest"
2. Amend page 9, section 1, line 9.
Following: "annum"
Strike: "interest"
3. Amend page 10, section 1, line 5.
Following: "section"
Insert: "until the full amount is"
4. Amend page 10, section 1, line 6.
Following: "withdrawn"
Insert: "from the court"

HOUSE BILL NO. 684

INTRODUCED BY WOLFE, PALMER, JACOBSEN, UNDERDAL, VINCENT, JACK MOORE, HARPER, BERTELSEN, GUNDERSON, LESTER, LUEBECK, THOMAS, SOUTH, SLOAN, SHELDEN, HAGEMAN, FLEMING, FEDERICO, MFLLOY, JOHNSON, JAMES MOORE, ELLIS, FISHBAUGH, TRAVIS, STOLTZ, DUSSAULT, TROPILA, HALVORSON, FINLEY, STAIGMILLER, DRISCOLL, TEAGUE, KEMMIS, BRAND, MANUEL, FAGG, WILLIAMS, HELMBRECHT, R. BAETE, MAGONE, DASSINGER

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO EMINENT DOMAIN LAWS; PROVIDING A MORE FAIR AND EQUITABLE METHOD OF TREATING THE DEFENDANT PROPERTY OWNER IN SUCH PROCEEDINGS; AMENDING SECTIONS 93-9901, 93-9907, 93-9910, 93-9912, 93-9913, 93-9917, AND 93-9920; R.C.M. 1947 INTEREST PAID IN EMINENT DOMAIN PROCEEDINGS; AMENDING SECTION 93-9913, R.C.M. 1947."

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

Section 1, Section 93-9901, R.C.M. 1947, is amended to read as follows:

"93-9901. Eminent domain defined. Eminent domain is the right privilege of the state to take private property for public use. This right privilege may be exercised in the manner provided in this chapter."

Section 2, Section 93-9907, R.C.M. 1947, is amended to

read as follows:

"93-9907. The complaint and its contents. The complaint must contain:

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 privilege of plaintiff.

4. 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. A description of each piece of land 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 town, or a county, the county commissioners of the county

1 may be named as plaintiff;

2 ~~6. If a sand, stratum or formation suitable for use as~~
3 ~~an underground natural gas storage reservoir is sought to be~~
4 ~~appropriated, a description thereof and of the land in which~~
5 ~~it is alleged to be contained, and a description of all~~
6 ~~other property and rights sought to be appropriated for use~~
7 ~~in connection with the appropriation of the right to store~~
8 ~~natural gas in and withdraw natural gas from such reservoir;~~
9 ~~In addition, the complaint shall state facts showing that~~
10 ~~the underground reservoir is one subject to appropriation by~~
11 ~~plaintiff, also stating that the underground storage of~~
12 ~~natural gas in the land sought to be appropriated is in the~~
13 ~~public interest, that the underground reservoir is suitable~~
14 ~~and practicable for natural gas storage, that the plaintiff~~
15 ~~in good faith has been unable to acquire the rights sought~~
16 ~~to be appropriated hereunder and a statement that the rights~~
17 ~~and property sought to be appropriated are not prohibited by~~
18 ~~law, and in addition, the complaint must be accompanied by a~~
19 ~~certificate from the board of oil and gas conservation as~~
20 ~~set forth in section 60-804.~~"

21 Section 3, Section 93-9910, R.C.M., 1947, is amended to
22 read as follows:

23 "93-9910. Who may defend --- answer of defendant. All
24 persons named in the complaint, in occupation of, or
25 claiming an interest in, any of the property described in

1 the complaint, or in the amount to be awarded for the taking
2 thereof, though not named, may appear. The answer of each
3 appearing defendant must be filed and served upon the
4 plaintiff, or upon any attorney for plaintiff, within a
5 period of fifteen (15) ~~twenty (20)~~ ~~FIFTEEN (15)~~ days after
6 the service of summons and complaint. The answer of each
7 appearing defendant must contain a specific allegation as to
8 the total amount which such defendant claims is reasonable
9 and just for the taking of such defendant's lands or other
10 real property or interest therein."

11 Section 4, Section 93-9912, R.C.M., 1947, is amended to
12 read as follows:

13 "93-9912. Appointment and meeting of commissioners.
14 Immediately upon making and entering the preliminary
15 condemnation order the judge must meet with the respective
16 parties, or their attorneys of record, for the purpose of
17 appointing condemnation commissioners to ascertain and
18 determine the amount to be paid by the plaintiff to each
19 owner or other persons interested in such property by reason
20 of the appropriation of such property. The court must
21 thereupon appoint three (3) qualified, disinterested
22 condemnation commissioners. One of such commissioners shall
23 be nominated by the party or parties plaintiff, one of such
24 commissioners shall be nominated by the party or parties
25 defendant. The third commissioner shall be the chairman and

1 shall be nominated by the two (2) commissioners previously
 2 nominated, provided, however, that if said two (2)
 3 commissioners fail to make such choice at the time of their
 4 appointment, then such nomination shall be made by the
 5 presiding judge. Each commissioner shall possess the
 6 following qualifications: a citizen of the United States and
 7 over eighteen (18) years of age; that he is not more than
 8 seventy (70) years of age; that he is in possession of
 9 natural faculties, of ordinary intelligence and not
 10 decrepit; that he is possessed of sufficient knowledge of
 11 the English language; that he was assessed on the last
 12 assessment roll of a county within the judicial district in
 13 which the action is pending; that he has not been convicted
 14 of malfeasance in office or any felony or other high crime;
 15 that he is not related within the sixth degree to any party;
 16 that he does not stand in the relation of guardian and ward,
 17 master and servant, debtor and creditor, or principal and
 18 agent, or partner or surety as to any party. At the time of
 19 such meeting and nominations there shall be filed with the
 20 court by each nominating party or judge an affidavit of the
 21 person so nominated stating substantially as follows: that
 22 he has formed no unqualified opinion or belief as to the
 23 fairness or unfairness of the plaintiff's offer for the
 24 lands and improvements of the defendants; and that he has no

1 enmity against or bias in favor of any party and has not
 2 discussed, communicated or overheard or read any discussion
 3 or communication from any party relating to values of the
 4 lands in question or the compensation offered, demanded or
 5 to be awarded; that if selected as a condemnation
 6 commissioner he is willing to serve and will well and truly
 7 try the issues of compensation and a true decision render
 8 according to the evidence and in compliance with the
 9 instructions of the court; that he will not discuss the case
 10 with anyone except the other commissioners until a decision
 11 has been filed with the court;

12 Immediately upon such nomination and appointment of
 13 commissioners the same shall proceed to meet at the time and
 14 place stated in the order appointing them, which time shall
 15 be not more than ten (10) days after the order of
 16 appointing, and proceed to examine the lands sought to be
 17 appropriated. At a time appointed by the judge and within
 18 said ten (10) day period they shall hear the allegations and
 19 evidence of all persons interested in each of the several
 20 parcels of land. Such hearing shall be attended by and
 21 presided over by the presiding judge who shall make all
 22 necessary rulings upon procedure and the admissibility of
 23 evidence. At the conclusion of the aforesaid hearing, the
 24 court or judge shall instruct the commissioners as to the
 25 law applicable to their deliberations and shall instruct

1 them--that--their--duty--is--to--determine,--solely--upon--the--basis
2 of--said--examination--of--lands,--the--evidence--produced--at--the
3 hearing--or--hearings--and--the--instructions--of--the--court,--the
4 following:

5 1. The value of the property sought to be appropriated
6 and all improvements thereon pertaining to the realty, and
7 of each and every separate estate and interest therein, if
8 it consist of different parcels, the value of each parcel
9 and each estate or interest therein must be separately
10 assessed.

11 2. If the property sought to be appropriated
12 constitutes only a part of a larger parcel, the depreciation
13 in value which will accrue to the portion not sought to be
14 condemned, by reason of its severance from the portion
15 sought to be condemned, and the construction of the
16 improvements in the manner proposed by the plaintiff.

17 3. Separately, how much the portion not sought to be
18 condemned, and each estate or interest therein, will be
19 benefited, if at all, by the construction of the
20 improvements proposed by the plaintiff, and if the benefit
21 shall be equal to the amount assessed under subdivision 2,
22 the owner of the parcel shall be allowed no compensation
23 except the value of the portion taken, but if the benefits
24 shall be less than the amount assessed under subdivision 2,
25 the former shall be deducted from the latter, and the

1 remainder shall be the only amount allowed in addition to
2 the value.

3 4. If the property sought to be condemned be for a
4 railroad, the cost of good and sufficient fences along the
5 line of such railroad, and the cost of cattle guards where
6 fences may cross the line of such railroad.

7 5. Where there are two (2) or more estates or divided
8 interests in property sought to be condemned, the plaintiff
9 is entitled to have the amount of the award, for said
10 property first determined, as hereinbefore stated, as
11 between plaintiff and all defendants claiming any interests
12 therein; thereafter in the same proceeding the respective
13 rights of each of such defendants in and to the award shall
14 be determined by the commissioners, under supervision and
15 instruction of the court, and the award apportioned
16 accordingly.²

17 Section 1. Section 93-9913, R.C.M. 1947, is amended to
18 read as follows:

19 "93-9913. The date with respect to which compensation
20 shall be assessed. For the purpose of assessing compensation
21 the right thereto shall be deemed to have accrued at the
22 date of the service of the summons, and its actual value as
23 of that date shall be the measure of compensation for all
24 property to be actually taken, and the basis of depreciation
25 in value of property not actually taken, but injuriously

1 affected. This shall not be construed to limit the amount of
 2 compensation payable by the department of highways under the
 3 provisions of any legislation enacted pursuant to the
 4 Federal Highway Beautification Act of 1965. If an order be
 5 made letting the plaintiff into possession, as provided in
 6 section 93-9920, the full amount finally awarded shall draw
 7 ~~the highest lawful AT THE RATE OF ONE AND ONE HALF PERCENT~~
 8 ~~(1-1/2%) PER MONTH THE HIGHEST LAWFUL CONTRACT RATE OF~~
 9 INTEREST AT THE RATE OF TEN PERCENT (10%) PER ANNUM interest
 10 from the date on which the property owner surrenders
 11 possession of the property in accordance with the terms of
 12 such order to ~~the earlier of the following dates: THE~~
 13 EARLIER OF THE FOLLOWING DATES.

14 ~~(a) The date on which the right to appeal to the~~
 15 ~~Montana supreme court expires, or if appeal is filed, to the~~
 16 ~~date of final decision by the supreme court, or~~

17 (A) THE DATE ON WHICH THE RIGHT TO APPEAL TO THE
 18 MONTANA SUPREME COURT EXPIRES, OR IF APPEAL IS FILED, TO THE
 19 DATE OF FINAL DECISION BY THE SUPREME COURT, OR

20 ~~(b) The (B) THE~~ date on which ~~the property owner~~
 21 ~~withdraws from court~~ THE PROPERTY OWNER WITHDRAWS FROM COURT
 22 the full amount finally awarded ~~IS AVAILABLE IN THE COURT TO~~
 23 ~~BE WITHDRAWN BY THE DEFENDANT.~~

24 If the property owner withdraws from court a fraction
 25 of the amount finally awarded, interest on such fraction

1 shall cease on the date it is withdrawn but interest on the
 2 remainder of the amount finally awarded shall continue ~~to~~
 3 ~~the earlier of the aforesaid dates defined in (a) and (b) of~~
 4 ~~this section~~ TO THE EARLIER OF THE AFORESAID DATES DEFINED
 5 IN (A) AND (B) OF THIS SECTION ~~until the full amount is~~
 6 ~~withdrawn~~ UNTIL THE FULL AMOUNT IS WITHDRAWN AVAILABLE FOR
 7 ~~WITHDRAWAL FROM THE COURT.~~ ~~None of the amount finally~~
 8 ~~awarded shall draw interest after the date on which the~~
 9 ~~right to appeal to the Montana supreme court expires.~~ FROM
 10 THE COURT NONE OF THE AMOUNT FINALLY AWARDED SHALL DRAW
 11 INTEREST AFTER THE DATE ON WHICH THE RIGHT TO APPEAL TO THE
 12 MONTANA SUPREME COURT EXPIRES. No improvements put upon the
 13 property, subsequent to the date of the service of summons,
 14 shall be included in the assessment of compensation or
 15 depreciation in value, nor shall the same be used as the
 16 basis of computing such compensation or depreciation."

17 ~~Section 6, Section 93-9917, R.C.M., 1947, is amended to~~
 18 ~~read as follows:~~

19 ~~"93-9917. Payment of damages or deposit of bond~~
 20 ~~therefor. The plaintiff must, within thirty days after~~
 21 ~~final judgment, pay the sum of money assessed, but may, at~~
 22 ~~the time of or before the payment, elect to build the fences~~
 23 ~~and cattle guards, and, if he so elect, shall execute to the~~
 24 ~~defendant a bond, with sureties to be approved by the court,~~
 25 ~~in double the assessed cost of the same, to build such~~

1 fences and cattle guards within eight months from the time
 2 the railroad is built on the land taken, and, if such bond
 3 be given, need not pay the cost of such fences and cattle
 4 guards. In an action on such bond, the plaintiff may recover
 5 reasonable attorney's fees. All fences and cattle guards
 6 NECESSARY AND BY THE CONDEMNATION ACTION, shall be built AS
 7 SOON AS FEASIBLE, and maintained by plaintiff at his own
 8 expense. Damage occurring to any person or property that
 9 results from plaintiff's failure to comply with this section
 10 shall be paid by plaintiff to the injured person, or owner
 11 of the damaged property."

12 Section 7, Section 93-9920, R.C.M., 1947, is amended to
 13 read as follows:

14 "93-9920. Putting plaintiff in possession. At any
 15 time after the filing of the preliminary condemnation order
 16 or after the report and assessment of the commissioners have
 17 been made and filed in the court, and either before or after
 18 appeal from such assessment, or from any other order or
 19 judgment in the proceedings, the court or any judge thereof
 20 at chambers, upon application of the plaintiff, shall have
 21 power to make an order that upon payment into court for the
 22 defendant entitled thereto of the amount of compensation
 23 claimed by the defendant in his answer or the amount
 24 assessed, either by the commissioners or by the jury, as the
 25 case may be, the plaintiff be authorized, if already in

1 possession of the property of such defendant sought to be
 2 appropriated, to continue in such possession, or, if not in
 3 possession, that the plaintiff be authorized to take
 4 possession of such property and use and possess the same
 5 during the pendency and until the final conclusion of the
 6 proceedings and litigation, and that all actions and
 7 proceedings against the plaintiff on account thereof be
 8 stayed until such time, provided, however, that where an
 9 appeal is taken by such defendant, the court or judge may,
 10 in its or his discretion, require the plaintiff, before
 11 continuing or taking such possession, in addition to paying
 12 into court the amount assessed, to give bond or undertaking
 13 with sufficient sureties, to be approved by the judge and to
 14 be in such sum as the court or judge may direct, conditioned
 15 to pay the defendant any additional damages and costs over
 16 and above the amount assessed, which it may finally be
 17 determined that defendant is entitled to for the
 18 appropriation of the property, and all damages which
 19 defendant may sustain if for any cause such property shall
 20 not be finally taken for public uses.

21 The amount assessed by the commissioners, or by the
 22 jury on appeal, as the case may be, shall be taken and
 23 considered for the purposes of this section until
 24 reassessed or changed in the further proceedings, as just
 25 compensation for the property appropriated, but the

1 plaintiff, by payment into court of the amount claimed in
 2 the answer or the amount assessed, or by giving security as
 3 above provided, shall not be thereby prevented or precluded
 4 from appealing from such assessment, but may appeal in the
 5 same manner and with the same effect as if no money had been
 6 deposited or security given, and in all cases where the
 7 plaintiff deposits the amount of the assessment and
 8 continues in possession, or takes possession of the
 9 property, as herein provided, the defendant entitled
 10 thereto, if there be no dispute as to the ownership of the
 11 property, may at any time demand and receive upon order of
 12 the court, all or any part of the money so deposited, and
 13 shall not by such demand or receipt be barred or precluded
 14 from his right of appeal from such assessment, but may,
 15 notwithstanding, take and prosecute his appeal from such
 16 assessment, provided, that if the amount of such assessment
 17 is finally reduced on appeal by either party, such defendant
 18 who has received all or any part of the amount deposited
 19 shall be liable to the plaintiff for any excess of the
 20 amount so received by him over the amount finally assessed,
 21 with legal interest on such excess from the time such
 22 defendant received the money deposited, and the same may be
 23 recovered by action, and, provided, further, that upon any
 24 appeal from assessment by the commissioners to a jury, the
 25 jury may find a less as well as an equal or greater amount

1 than that assessed by the commissioners, and provided,
 2 further, that the court shall not order the delivery to any
 3 defendant of more than seventy-five (75) per cent of the
 4 money deposited on his account except upon posting of bond
 5 by such defendant equal to the amount in excess of
 6 seventy-five (75) per cent, with sureties to be approved by
 7 the court, to repay to the plaintiff such amounts withdrawn
 8 as are in excess of his final award in the proceedings.
 9 Plaintiff shall not be put in possession until final
 10 determination of value of condemnation is made and defendant
 11 is paid in full, including all expenses of litigation,
 12 litigation expenses for both parties shall be paid by
 13 plaintiff, defendant is entitled to payment for each day
 14 spent in court in an amount equal to the daily rate of the
 15 highest paid person in plaintiff's organization."

16 Section 8, there is a new section numbered
 17 93-9945 that reads as follows:

18 93-9945. Property damage. All claims for damage to
 19 property of defendant or defendant's agents, tenants,
 20 lessees, or other persons with an interest in defendant's
 21 property by plaintiff or plaintiff's agents or contractors,
 22 shall be paid in full before plaintiff may utilize the
 23 condemned property for any use, interest, at the rate of
 24 one and one-half percent (1 1/2%) per month, shall accrue to
 25 the damaged party from thirty (30) days after the date of

1 damage:

2 Section 9. There is a new R.C.M. section numbered
3 93-9946 that reads as follows:

4 93-9946. Future damage to defendant's adjacent
5 property. Plaintiff is liable to defendant for damage to
6 defendant's real or personal ADJACENT property which occurs
7 as the result of an action by plaintiff or an agent,
8 contractor or servant of plaintiff in utilizing the
9 condemned land:

10 Section 10. There is a new R.C.M. section numbered
11 93-9947 that reads as follows:

12 93-9947. Other persons entitled to compensation. A
13 person, not defendant, owning property within a reasonable
14 distance of the property condemned under eminent domain who
15 suffers damages to realty or personalty as a result of
16 plaintiff's use of the condemned property is entitled to
17 compensation for that damage:

18 Section 11. There is a new R.C.M. section numbered
19 93-9948 that reads as follows:

20 93-9948. Nonliability. The owner of PROPERTY ADJACENT
21 TO condemned property, his agents and assigns are not liable
22 at any time for their acts which result in damage to the
23 condemning parties' property unless those acts are willful,
24 wanton, or intentional:

-End-