

Senate BILL NO. 349

INTRODUCED BY LYNE H

A BILL FOR AN ACT ENTITLED: "AN ACT INCLUDING REPLACEMENT COSTS AS AN ELEMENT OF THE AWARD IN AN EMINENT DOMAIN PROCEEDING; AMENDING SECTION 93-9912."

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

Section 1. Section 93-9912, R.C.M. 1947, is amended to read as follows:

"93-9912. Appointment and meeting of commissioners.

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 court must thereupon appoint three (3) qualified, disinterested condemnation commissioners. 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 (2) commissioners previously nominated, provided, however, that if said two (2)

commissioners fail to make such choice at the time of their appointment, then such nomination shall be made by the presiding judge. Each commissioner shall possess the following qualifications: a citizen of the United States and over eighteen (18) years of age; that he is not more than seventy (70) years of age; that he is in possession of natural faculties, of ordinary intelligence and not decrepit; that he is possessed of sufficient knowledge of the English language; that he was assessed on the last assessment roll of a county within the judicial district in which the action is pending; that he has not been convicted of malfeasance in office, or any felony or other high crime; that he is not related within the sixth degree to any party; 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. 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: 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; and that he has no enmity against or bias in favor of any party and has not discussed, communicated or overheard or read any discussion

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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; and
 6 including as an element of such value the actual reasonable
 7 costs of replacing the property sought to be appropriated
 8 with similar property, to be calculated as replacement costs
 9 are determined under section 93-9929 and 93-9930; if it
 10 consist of different parcels, the value of each parcel and
 11 each estate or interest therein must be separately assessed.

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

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

1 the former shall be deducted from the latter, and the
2 remainder shall be the only amount allowed in addition to
3 the value.

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

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

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