

CHAPTER NO. 8

SENATE BILL NO. 56

INTRODUCED BY LENSINK

BY REQUEST OF THE DEPARTMENT OF HIGHWAYS

IN THE SENATE

January 5, 1979	Introduced and referred to Committee on Judiciary.
	On motion Senator Lensink was added as author to the Pre-Filed Bill.
January 13, 1979	Committee recommend bill do pass as amended. Report adopted.
January 15, 1979	Printed and placed on members' desks.
January 16, 1979	Second Reading, do pass.
January 17, 1979	Considered correctly engrossed.
January 18, 1979	Third Reading passed. Transmitted to Second House.

IN THE HOUSE

January 19, 1979	Introduced and referred to Committee on Judiciary.
January 25, 1979	Committee recommend bill be concurred in. Report adopted.
January 26, 1979	Second Reading, concurred in.
January 27, 1979	Third Reading, concurred in.

IN THE SENATE

January 29, 1979

Returned from Second House.
Sent to enrolling.

Report correctly enrolled.

SENATE BILL NO. 56

INTRODUCED BY _____

BY REQUEST OF THE DEPARTMENT OF HIGHWAYS

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAW RELATING TO CONDEMNATION; AMENDING SECTIONS 70-30-207 AND 70-30-305, MCA."

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

Section 1. 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 condemnation commissioners and the commission hearing may be waived by 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

1 and ward, master and servant, debtor and creditor, or
2 principal and agent or partner or surety as to any party.

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

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

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

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

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

25 Section 2. Section 70-30-305, MCA, is amended to read:

1 "70-30-305. Condemner to make offer upon appeal —
2 award of expenses of litigation. (1) The condemnor shall,
3 within 30 days after an appeal is perfected from the
4 commissioner's award or report, ~~or not less than 30 days~~
5 ~~prior to trial,~~ submit to condemnee a written final offer of
6 judgment for the property to be condemned, together with
7 necessary expenses of condemnee then accrued. If at any time
8 prior to 10 days before trial the condemnee serves written
9 notice that the offer is accepted, either party may then
10 file the offer and notice of acceptance, together with proof
11 of service thereof, and thereupon judgment shall be entered.
12 An offer not accepted shall be deemed withdrawn and evidence
13 thereof is not admissible at the trial except in a
14 proceeding to determine costs. The fact that an offer is
15 made but not accepted does not preclude a subsequent offer.
16 (2) In the event of litigation and when the private
17 property owner prevails by receiving an award in excess of
18 the final offer of the condemnor, the court shall award
19 necessary expenses of litigation to the condemnee."

-End-

Approved by Committee
on Judiciary

1 SENATE BILL NO. 56
2 INTRODUCED BY LENSTNK
3 BY REQUEST OF THE DEPARTMENT OF HIGHWAYS
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAW
6 RELATING TO CONDEMNATION; AMENDING SECTIONS 70-30-207 AND
7 70-30-305, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 70-30-207, MCA, is amended to read:

11 "70-30-207. Appointment of commissioners --
12 qualifications -- affidavit. (1) Immediately upon making and
13 entering the preliminary condemnation order, the judge must
14 meet with the respective parties or their attorneys of
15 record for the purpose of appointing condemnation
16 commissioners to ascertain and determine the amount to be
17 paid by the plaintiff to each owner or other persons
18 interested in such property by reason of the appropriation
19 of such property. ~~The appointment of condemnation~~
20 ~~commissioners and the commission hearing may be waived by~~
21 ~~WRITTEN consent of both parties, in which case the~~
22 ~~proceeding shall be conducted in the district court as if~~
23 ~~the case had been appealed from an award by such~~
24 ~~commissioners.~~

25 (2) The court must thereupon appoint three qualified,

1 disinterested condemnation commissioners, unless appointment
2 has been waived. One of such commissioners shall be
3 nominated by the party or parties plaintiff. One of such
4 commissioners shall be nominated by the party or parties
5 defendant. The third commissioner shall be the chairman and
6 shall be nominated by the two commissioners previously
7 nominated. However, if said two commissioners fail to make
8 such choice at the time of their appointment, then such
9 nomination shall be made by the presiding judge.

10 (3) Each commissioner shall possess the following
11 qualifications:

- 12 (a) a citizen of the United States and over 18 years
13 of age;
- 14 (b) that he is not more than 70 years of age;
- 15 (c) that he is in possession of natural faculties, of
16 ordinary intelligence, and not decrepit;
- 17 (d) that he is possessed of sufficient knowledge of
18 the English language;
- 19 (e) that he was assessed on the last assessment roll
20 of a county within the judicial district in which the action
21 is pending;
- 22 (f) that he has not been convicted of malfeasance in
23 office or any felony or other high crime;
- 24 (g) that he is not related within the sixth degree to
25 any party;

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

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

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

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

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

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

1 Section 2. Section 70-30-305, MCA, is amended to read:

2 "70-30-305. Condemnor to make offer upon appeal --
3 award of expenses of litigation. (1) The condemnor shall,
4 within 30 days after an appeal is perfected from the
5 commissioner's award or report, ~~or not less than 30 days~~
6 ~~prior to trial~~ OR NOT MORE THAN 60 DAYS AFTER WAIVER OF
7 ~~APPOINTMENT OF CONDEMNATION COMMISSIONERS,~~ submit to
8 condemnee a written final offer of judgment for the property
9 to be condemned, together with necessary expenses of
10 condemnee then accrued. If at any time prior to 10 days
11 before trial the condemnee serves written notice that the
12 offer is accepted, either party may then file the offer and
13 notice of acceptance, together with proof of service
14 thereof, and thereupon judgment shall be entered. An offer
15 not accepted shall be deemed withdrawn and evidence thereof
16 is not admissible at the trial except in a proceeding to
17 determine costs. The fact that an offer is made but not
18 accepted does not preclude a subsequent offer.

19 (2) In the event of litigation and when the private
20 property owner prevails by receiving an award in excess of
21 the final offer of the condemnor, the court shall award
22 necessary expenses of litigation to the condemnee."

-End-

1 SENATE BILL NO. 56

2 INTRODUCED BY LENSINK

3 BY REQUEST OF THE DEPARTMENT OF HIGHWAYS

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAW
6 RELATING TO CONDEMNATION; AMENDING SECTIONS 70-30-207 AND
7 70-30-305, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 70-30-207, MCA, is amended to read:

11 "70-30-207. Appointment of commissioners --
12 qualifications -- affidavit. (1) Immediately upon making and
13 entering the preliminary condemnation order, the judge must
14 meet with the respective parties or their attorneys of
15 record for the purpose of appointing condemnation
16 commissioners to ascertain and determine the amount to be
17 paid by the plaintiff to each owner or other persons
18 interested in such property by reason of the appropriation
19 of such property. ~~The appointment of condemnation~~
20 ~~commissioners and the commission hearing may be waived by~~
21 ~~WRITTEN consent of both parties, in which case the~~
22 ~~proceeding shall be conducted in the district court as if~~
23 ~~the case had been appealed from an award by such~~
24 ~~commissioners.~~

25 (2) The court must thereupon appoint three qualified,

1 disinterested condemnation commissioners, ~~unless appointment~~
2 ~~has been waived.~~ One of such commissioners shall be
3 nominated by the party or parties plaintiff. One of such
4 commissioners shall be nominated by the party or parties
5 defendant. The third commissioner shall be the chairman and
6 shall be nominated by the two commissioners previously
7 nominated. However, if said two commissioners fail to make
8 such choice at the time of their appointment, then such
9 nomination shall be made by the presiding judge.

10 (3) Each commissioner shall possess the following
11 qualifications:

12 (a) a citizen of the United States and over 18 years
13 of age;

14 (b) that he is not more than 70 years of age;

15 (c) that he is in possession of natural faculties, of
16 ordinary intelligence, and not decrepit;

17 (d) that he is possessed of sufficient knowledge of
18 the English language;

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

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

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

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

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

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

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

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

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

1 Section 2. Section 70-30-305, MCA, is amended to read:

2 "70-30-305. Condemnor to make offer upon appeal --
3 award of expenses of litigation. (1) The condemnor shall,
4 within 30 days after an appeal is perfected from the
5 commissioner's award or report ~~or not less than 30 days~~
6 ~~prior to trial~~ OR NOT MORE THAN 60 DAYS AFTER WAIVER OF
7 APPOINTMENT OF CONDEMNATION COMMISSIONERS, submit to
8 condemnee a written final offer of judgment for the property
9 to be condemned, together with necessary expenses of
10 condemnee then accrued. If at any time prior to 10 days
11 before trial the condemnee serves written notice that the
12 offer is accepted, either party may then file the offer and
13 notice of acceptance, together with proof of service
14 thereof, and thereupon judgment shall be entered. An offer
15 not accepted shall be deemed withdrawn and evidence thereof
16 is not admissible at the trial except in a proceeding to
17 determine costs. The fact that an offer is made but not
18 accepted does not preclude a subsequent offer.

19 (2) In the event of litigation and when the private
20 property owner prevails by receiving an award in excess of
21 the final offer of the condemnor, the court shall award
22 necessary expenses of litigation to the condemnee."

-End-

SENATE BILL NO. 56

INTRODUCED BY LENSINK

BY REQUEST OF THE DEPARTMENT OF HIGHWAYS

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAW RELATING TO CONDEMNATION; AMENDING SECTIONS 70-30-207 AND 70-30-305, MCA."

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

Section 1. 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 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;

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

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

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

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

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

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

1 Section 2. Section 70-30-305, MCA, is amended to read:

2 "70-30-305. Condemnor to make offer upon appeal --
3 award of expenses of litigation. (1) The condemnor shall,
4 within 30 days after an appeal is perfected from the
5 commissioner's award or report ~~or not less than 30 days~~
6 ~~prior to trial~~ OR NOT MORE THAN 60 DAYS AFTER WAIVER OF
7 ~~APPOINTMENT OF CONDEMNATION COMMISSIONERS,~~ submit to
8 condemnee a written final offer of judgment for the property
9 to be condemned, together with necessary expenses of
10 condemnee then accrued. If at any time prior to 10 days
11 before trial the condemnee serves written notice that the
12 offer is accepted, either party may then file the offer and
13 notice of acceptance, together with proof of service
14 thereof, and thereupon judgment shall be entered. An offer
15 not accepted shall be deemed withdrawn and evidence thereof
16 is not admissible at the trial except in a proceeding to
17 determine costs. The fact that an offer is made but not
18 accepted does not preclude a subsequent offer.

19 (2) In the event of litigation and when the private
20 property owner prevails by receiving an award in excess of
21 the final offer of the condemnor, the court shall award
22 necessary expenses of litigation to the condemnee.*

-End-