

SENATE BILL NO. 269

INTRODUCED BY CONOVER, OCHSNER, TOWE

IN THE SENATE

January 24, 1981	Introduced and referred to Committee on Taxation.
February 20, 1981	Committee recommend bill do pass as amended. Report adopted.
February 21, 1981	Bill printed and placed on members' desks.
February 23, 1981	Second reading, do pass as amended.
February 24, 1981	Correctly engrossed.
February 25, 1981	Third reading, passed. Ayes, 49; Noes, 0. Transmitted to House.

IN THE HOUSE

March 2, 1981	Introduced and referred to Committee on Taxation.
April 11, 1981	Committee recommend bill be concurred in as amended. Report adopted.
April 16, 1981	Second reading, concurred in. On motion rules suspended and bill placed on third reading this day. Third reading, concurred in as amended. Ayes, 73; Noes, 24.

IN THE SENATE

April 17, 1981

Returned from House with amendments.

April 20, 1981

Second reading, amendments concurred in.

On motion rules suspended. Bill placed on calendar for third reading this day.

Third reading, amendments concurred in. Ayes, 47; Noes, 0. Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. *269*
 2 INTRODUCED BY *Conara O. Johnson, Jr.*

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE METHODS
 5 OF PAYMENT IN EMINENT DOMAIN PROCEEDINGS; PROVIDING FOR
 6 PAYMENT OF CURRENT FAIR MARKET VALUE; REQUIRING PRORATION OF
 7 TAXES AND WEED CONTROL; AND AMENDING SECTIONS 70-30-301,
 8 70-30-302, AND 70-30-308, MCA."

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

11 Section 1. Section 70-30-301, MCA, is amended to read:

12 "70-30-301. Hearing -- judge to preside --
 13 determinations by commissioners. (1) Immediately upon
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 15 the same shall proceed to meet at the time and place stated
 16 in the order appointing them, which time shall not be more
 17 than 10 days after the order of appointing, and proceed to
 18 examine the lands sought to be appropriated. At a time
 19 appointed by the judge and within said 10-day period they
 20 shall hear the allegations and evidence of all persons
 21 interested in each of the several parcels of land.

22 (2) Such hearing shall be attended by and presided
 23 over by the presiding judge who shall make all necessary
 24 rulings upon procedure and the admissibility of evidence.

25 (3) At the conclusion of the aforesaid hearing, the

1 court or judge shall instruct the commissioners as to the
 2 law applicable to their deliberations and shall instruct
 3 them that their duty is to determine, solely upon the basis
 4 of said examination of lands, the evidence produced at the
 5 hearing or hearings, and the instructions of the court, the
 6 following:

7 (a) the current fair market value of the property
 8 sought to be appropriated and all improvements thereon
 9 pertaining to the realty and of each and every separate
 10 estate and interest therein. If it consists of different
 11 parcels, the current fair market value of each parcel and
 12 each estate or interest therein must be separately assessed.

13 (b) if the property sought to be appropriated
 14 constitutes only a part of a larger parcel, the depreciation
 15 in current fair market value which will accrue to the
 16 portion not sought to be condemned by reason of its
 17 severance from the portion sought to be condemned and the
 18 construction of the improvements in the manner proposed by
 19 the plaintiff;

20 (c) separately, how much the portion not sought to be
 21 condemned and each estate or interest therein will be
 22 benefited, if at all, by the construction of the
 23 improvements proposed by the plaintiff; and if the benefit
 24 shall be equal to the amount assessed under subsection
 25 (3)(b), the owner of the parcel shall be allowed no

1 compensation except the value of the portion taken; but if
 2 the benefits shall be less than the amount assessed under
 3 subsection (3)(b), the former shall be deducted from the
 4 latter, and the remainder shall be the only amount allowed
 5 in addition to the current fair market value;

6 (d) if the property sought to be condemned be for a
 7 railroad, the cost of good and sufficient fences along the
 8 line of such railroad and the cost of cattle guards where
 9 fences may cross the line of such railroad.

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

20 Section 2. Section 70-30-302, MCA, is amended to read:

21 "70-30-302. Assessing compensation -- date and measure
 22 -- interest. (1) For the purpose of assessing compensation,
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 25 fair market value as of that date shall be the measure of

1 compensation for all property to be actually taken and the
 2 basis of depreciation in the current fair market value of
 3 property not actually taken but injuriously affected. This
 4 shall not be construed to limit the amount of compensation
 5 payable by the department of highways under the provisions
 6 of any legislation enacted pursuant to the federal Highway
 7 Beautification Act of 1965.

8 (2) If an order be made letting the plaintiff into
 9 possession, as provided in 70-30-311, the full amount
 10 finally awarded shall draw interest at the rate of 10% per
 11 annum from the date on which the property owner surrenders
 12 possession of the property in accordance with the terms of
 13 such order to the 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 (b) the date on which the property owner withdraws
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19 (3) If the property owner withdraws from court a
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 24 in (2)(a) and (2)(b) of this section until the full amount
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9 Section 3. Section 70-30-308, MCA, is amended to read:

10 "70-30-308. How payment made -- execution or annulment
11 for nonpayment. (1) Payment may be made to the defendants
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13 the defendants and be distributed to those entitled thereto.
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17 contract method;

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19 and plaintiffs if the land to be provided by the plaintiffs
20 in the exchange is of equal or more value than the land
21 being condemned; or

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23 property is involved, payments may be made on an annual
24 basis. Such payments must be for the value of the use of the
25 land in the same manner as a lease payment. The payments

1 shall continue for the duration of the easement.

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

9 NEW SECTION. Section 4. Current fair market value.
10 Current fair market value is the price that would be agreed
11 to by a willing and informed seller and buyer, taking into
12 consideration, but not limited to, the following factors:

13 (1) the highest and best reasonably available use of
14 the property and its value for such use;

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16 part of the real estate taken; and

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

19 NEW SECTION. Section 5. Weed control responsibility.
20 The plaintiff, upon taking possession of the land, is
21 responsible for the control and destruction of noxious weeds
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23 property and noxious weeds have ceased to exist.

24 NEW SECTION. Section 6. Proration of taxes. The
25 plaintiff shall be assessed his pro rata share of taxes for

1 the land being condemned as of the date of possession. The
2 plaintiff shall be assessed for all taxes accruing after the
3 date of possession.

4 Section 7. Codification instruction. Sections 4, 5,
5 and 6 are intended to be codified as an integral part of
6 Title 70, chapter 30, part 3, and the provisions of Title
7 70, chapter 30, apply to sections 4, 5, and 6, and sections
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Approved by Committee
on Taxation

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(2) Such hearing shall be attended by and presided over by the presiding judge who shall make all necessary rulings upon procedure and the admissibility of evidence.

(3) At the conclusion of the aforesaid hearing, the

court or judge shall instruct the commissioners as to the law applicable to their deliberations and shall instruct them that their duty is to determine, solely upon the basis of said examination of lands, the evidence produced at the hearing or hearings, and the instructions of the court, the following:

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(b) if the property sought to be appropriated constitutes only a part of a larger parcel, the depreciation in current fair market value which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned and the construction of the improvements in the manner proposed by the plaintiff;

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1 shall continue for the duration of the easement. THE
2 DEFENDANT SHALL EXERCISE THE OPTION GRANTED IN THIS SECTION
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21 "70-30-302. Assessing compensation -- date and measure
 22 -- interest. (1) For the purpose of assessing compensation,
 23 the right thereto shall be deemed to have accrued at the
 24 date of the service of the summons, and its actual current
 25 fair market value as of that date shall be the measure of

1 compensation for all property to be actually taken and the
 2 basis of depreciation in the current fair market value of
 3 property not actually taken but injuriously affected. This
 4 shall not be construed to limit the amount of compensation
 5 payable by the department of highways under the provisions
 6 of any legislation enacted pursuant to the federal Highway
 7 Beautification Act of 1965.

8 (2) If an order be made letting the plaintiff into
 9 possession, as provided in 70-30-311, the full amount
 10 finally awarded shall draw interest at the rate of 10% per
 11 annum from the date on which the property owner surrenders
 12 possession of the property in accordance with the terms of
 13 such order to the 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 (b) the date on which the property owner withdraws
 18 from court the full amount finally awarded.

19 (3) If the property owner withdraws from court a
 20 fraction of the amount finally awarded, interest on such
 21 fraction shall cease on the date it is withdrawn but
 22 interest on the remainder of the amount finally awarded
 23 shall continue to the earlier of the aforesaid dates defined
 24 in (2)(a) and (2)(b) of this section until the full amount
 25 is withdrawn from the court.

1 (4) None of the amount finally awarded shall draw
2 interest after the date on which the right to appeal to the
3 Montana supreme court expires.

4 (5) No improvements put upon the property subsequent
5 to the date of the service of summons shall be included in
6 the assessment of compensation or depreciation in current
7 fair market value, nor shall the same be used as the basis
8 of computing such compensation or depreciation."

9 Section 3. Section 70-30-308, MCA, is amended to read:

10 "70-30-308. How payment made -- execution or annulment
11 for nonpayment. (1) Payment may be made to the defendants
12 entitled thereto, or the money may be deposited in court for
13 the defendants and be distributed to those entitled thereto.
14 However, at the option of the defendants, payments may be
15 made:

16 (a) IF A FEE SIMPLE INTEREST IN THE DEFENDANT'S LAND
17 IS TAKEN, on an annual basis, utilizing the installment
18 contract method;

19 (b) IF OTHER LAND IS REASONABLY AVAILABLE AND THE
20 PLAINTIFF CONSENTS, by means of a land exchange between the
21 defendants and plaintiffs if the land to be provided by the
22 plaintiffs in the exchange is of equal or more value than
23 the land being condemned; or

24 (c) if an easement over or through the defendants'
25 property is involved, ~~payments may be made on an annual~~

1 ~~basis. Such payments must be for the value of the use of the~~
2 ~~land in the same manner as a lease payments. The payments~~
3 ~~shall continue for the duration of the easement. THE~~
4 ~~DEFENDANT SHALL EXERCISE THE OPTION GRANTED IN THIS SECTION~~
5 ~~BY FILING A WRITTEN ELECTION WITH THE DISTRICT COURT AT~~
6 ~~LEAST 15 DAYS BEFORE TRIAL. IF THE OPTION IS EXERCISED THE~~
7 ~~AGREEMENT OR COURT ORDER FOR ANNUAL PAYMENTS SHALL BE~~
8 ~~CONSIDERED THE JUST COMPENSATION REQUIRED UNDER ARTICLE 2,~~
9 ~~SECTION 29, MONTANA CONSTITUTION. IT MAY NOT BE CHANGED OR~~
10 ~~ALTERED AS A RESULT OF SUBSEQUENT CIRCUMSTANCES. IN EITHER A~~
11 ~~SINGLE PAYMENT OR IN NOT MORE THAN FIVE CONSECUTIVE ANNUAL~~
12 ~~INSTALLMENTS.~~

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

20 NEW SECTION. Section 4. Current fair market value.
21 Current fair market value is the price that would be agreed
22 to by a willing and informed seller and buyer, taking into
23 consideration, but not limited to, the following factors:

24 (1) the highest and best reasonably available use of
25 the property and its value for such use;

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

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

5 NEW SECTION. Section 5. Weed control responsibility.
6 The plaintiff, upon taking possession of the land, is
7 responsible for the control and destruction of noxious weeds
8 on such land until natural grasses have taken over the
9 property and noxious weeds have ceased to exist.

10 NEW SECTION. Section 6. Proration of taxes. The
11 plaintiff shall be assessed his pro rata share of taxes for
12 the land being condemned as of the date of possession OR
13 SUMMONS, WHICHEVER OCCURS FIRST. The plaintiff shall be
14 assessed for all taxes accruing after the date of possession
15 OR SUMMONS, WHICHEVER OCCURS FIRST.

16 Section 7. Codification instruction. Sections 4, 5,
17 and 6 are intended to be codified as an integral part of
18 Title 70, chapter 30, part 3, and the provisions of Title
19 70, chapter 30, apply to sections 4, 5, and 6, and sections
20 4, 5, and 6 apply to Title 70, chapter 30.

-End-

April 11, 1981

HOUSE COMMITTEE ON TAXATION AMENDMENTS TO
SENATE BILL 269:

1. Page 5, line 25 through line 10, page 6.

Following: "involved," on page 5, line 25

Strike: line 25 through line 10 on page 6 in their entirety

Insert: "in either a single payment or in not more than five consecutive
annual installments."