

HOUSE BILL NO. 265

INTRODUCED BY MCBRIDE, BLAYLOCK

BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE

IN THE HOUSE

January 15, 1983	Introduced and referred to Committee on Judiciary.
January 27, 1983	Committee recommend bill do pass as amended. Report adopted.
January 28, 1983	Bill printed and placed on members' desks.
January 29, 1983	Second reading, do pass.
January 31, 1983	Considered correctly engrossed.
February 1, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 2, 1983	Introduced and referred to Committee on Judiciary.
March 4, 1983	Committee recommend bill be concurred in. Report adopted.
March 7, 1983	Second reading, concurred in.
March 9, 1983	Third reading, concurred in. Ayes, 48; Noes, 2.

IN THE HOUSE

March 9, 1983	Returned to House.
March 10, 1983	Sent to enrolling.
	Reported correctly enrolled.

1 *House* BILL NO. *265*
 2 INTRODUCED BY *McBride Blaylock*
 3 BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING CERTAIN
 6 QUALIFICATIONS FOR CONDEMNATION COMMISSIONERS IN EMINENT
 7 DOMAIN PROCEEDINGS AND PROVIDING FOR THEIR COMPENSATION;
 8 AMENDING SECTION 70-30-207, MCA; AND PROVIDING AN EFFECTIVE
 9 DATE."
 10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 12 Section 1. Section 70-30-207, MCA, is amended to read:
 13 "70-30-207. Appointment of commissioners —
 14 ~~qualifications--~~ affidavit ~~= compensation.~~ (1) Immediately
 15 upon making and entering the preliminary condemnation order,
 16 the judge must meet with the respective parties or their
 17 attorneys of record for the purpose of appointing
 18 condemnation commissioners to ascertain and determine the
 19 amount to be paid by the plaintiff to each owner or other
 20 persons interested in such property by reason of the
 21 appropriation of such property. The appointment of
 22 condemnation commissioners and the commission hearing may be
 23 waived by written consent of both parties, in which case the
 24 proceeding shall be conducted in the district court as if
 25 the case had been appealed from an award by such

1 commissioners.
 2 (2) The court must thereupon appoint three qualified,
 3 disinterested condemnation commissioners, unless appointment
 4 has been waived. One of such commissioners shall be
 5 nominated by the party or parties plaintiff. One of such
 6 commissioners shall be nominated by the party or parties
 7 defendant. The third commissioner shall be the chairman and
 8 shall be nominated by the two commissioners previously
 9 nominated. However, if said two commissioners fail to make
 10 such choice at the time of their appointment, then such
 11 nomination shall be made by the presiding judge.
 12 ~~(3) Each commissioner shall possess the following~~
 13 ~~qualifications:~~
 14 ~~(a) a citizen of the United States and over 18 years~~
 15 ~~of age;~~
 16 ~~(b) that he is not more than 70 years of age;~~
 17 ~~(c) that he is in possession of natural faculties, of~~
 18 ~~ordinary intelligence, and not decrepit;~~
 19 ~~(d) that he is possessed of sufficient knowledge of~~
 20 ~~the English language;~~
 21 ~~(e) that he was assessed on the last assessment roll~~
 22 ~~of a county within the judicial district in which the action~~
 23 ~~is pending;~~
 24 ~~(f) that he has not been convicted of malfeasance in~~
 25 ~~office or any felony or other high crime;~~

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

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

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

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

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

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

(d) that he will not discuss the case with anyone

except the other commissioners until a decision has been filed with the court.

(4) (a) The court shall specify the compensation of the condemnation commissioners, which may not exceed \$250 a hearing day, including expenses. Each party shall pay the compensation of the commissioner he nominated, and the cost of compensating the third commissioner must be divided equally between the parties.

(b) If the decision of the condemnation commissioners is appealed pursuant to 70-30-304 and the appealing party does not receive an amount that exceeds the amount recommended by the commission, the appealing party shall pay the compensation of all the condemnation commissioners.

(c) If both parties appeal, the commissioners shall be paid as provided in subsection (4)(a)."

NEW SECTION. Section 2. Effective date. This act is effective July 1, 1983.

-End-

Approved by Committee
on Judiciary

HOUSE BILL NO. 265

INTRODUCED BY MCBRIDE, BLAYLOCK

BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING CERTAIN
QUALIFICATIONS FOR CONDEMNATION COMMISSIONERS IN EMINENT
DOMAIN PROCEEDINGS AND PROVIDING FOR THEIR COMPENSATION;
AMENDING SECTION 70-30-207, MCA; AND PROVIDING AN EFFECTIVE
DATE."

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 -- compensation.~~ (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:~~

~~(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--malfesance--in
office--or--any--felony--or--other--high--crimet~~

~~{g}--that--he--is--not--related--within--the--sixth--degree--to
any--party+~~

~~{h}--that--he--does--not--stand--in--the--relation--of--guardian
and--ward;--master--and--servant;--debtor--and--creditor;--or
principal--and--agent--or--partner--or--surety--as--to--any--party+~~

(A) THAT HE IS POSSESSED OF SUFFICIENT KNOWLEDGE OF
THE ENGLISH LANGUAGE;

(B) THAT HE IS A RESIDENT OF A COUNTY WITHIN THE
JUDICIAL DISTRICT IN WHICH THE ACTION IS PENDING;

(C) THAT HE IS NOT RELATED WITHIN THE SIXTH DEGREE TO
ANY PARTY; AND

(D) 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.

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

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

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

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

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

~~{f}{g}{h}~~(5) The court shall specify the compensation
of the condemnation commissioners, which may not exceed \$250
a hearing day, including expenses. Each THE CONDEMNING party
shall pay the compensation of the commissioner--the
COMMISSIONERS nominated--and--the cost of compensating the
third commissioner--must--be--divided--equally--between--the
parties.

~~{b}~~ if the decision of the condemnation commissioners
is appealed pursuant to 70-30-204 and the appealing party
does not receive an amount that exceeds the amount
recommended by the commission, the appealing party shall pay
the compensation of all the condemnation commissioners.

1 ~~fel--If both parties appeal, the commissioner's shall be~~
2 ~~paid as provided in subsection (4)(a).~~"

3 NEW SECTION. Section 2. Effective date. This act is
4 effective July 1, 1983.

-End-

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

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

1 commissioners.

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

12 ~~(3) EACH COMMISSIONER SHALL POSSESS THE FOLLOWING~~
13 ~~QUALIFICATIONS:~~

14 ~~(3)--Each--commissioner--shall--possess--the--following~~
15 ~~qualifications:~~

16 ~~(a)--a--citizen--of--the--United--States--and--over--18--years~~
17 ~~of--age;~~

18 ~~(b)--that--he--is--not--more--than--70--years--of--age;~~

19 ~~(c)--that--he--is--in--possession--of--natural--faculties--of~~
20 ~~ordinary--intelligence--and--not--decrepit;~~

21 ~~(d)--that--he--is--possessed--of--sufficient--knowledge--of~~
22 ~~the--English--language;~~

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

1 ~~{f}--that--he--has--not--been--convicted--of--molestation--in~~
2 ~~office--or--any--felony--or--other--high--crime;~~

3 ~~{g}--that--he--is--not--related--within--the--sixth--degree--to~~
4 ~~any--party;~~

5 ~~{h}--that--he--does--not--stand--in--the--relation--of--guardian~~
6 ~~and--ward--master--and--servant--debtor--and--creditor--or~~
7 ~~principal--and--agent--or--partner--or--surety--as--to--any--party.~~

8 ~~(A) THAT HE IS POSSESSED OF SUFFICIENT KNOWLEDGE OF~~
9 ~~THE ENGLISH LANGUAGE;~~

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11 ~~JUDICIAL DISTRICT IN WHICH THE ACTION IS PENDING;~~

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13 ~~ANY PARTY; AND~~

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15 ~~AND WARD, MASTER AND SERVANT, DEBTOR AND CREDITOR, OR~~
16 ~~PRINCIPAL AND AGENT OR PARTNER OR SURETY AS TO ANY PARTY.~~

17 ~~{4}{3}{4}~~ At the time of such meeting and nominations,
18 there shall be filed with the court by each nominating party
19 or judge an affidavit of the person so nominated stating
20 substantially as follows:

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

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

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

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

14 ~~{4}{5}{4}~~ The court shall specify the compensation
15 of the condemnation commissioners, which may not exceed \$250
16 a hearing day, including expenses. Each THE CONDEMNING party
17 shall pay the compensation of the commissioner--the
18 COMMISSIONERS nominated--and--the--cost--of--compensating--the
19 third commissioner--must--be--divided--equally--between--the
20 parties.

21 ~~that--if--the--decision--of--the--condemnation--commissioners~~
22 ~~is--appealed--pursuant--to--78-39-304--and--the--appealing--party~~
23 ~~does--not--receive--an--amount--that--exceeds--the--amount~~
24 ~~recommended--by--the--commission--the--appealing--party--shall--pay~~
25 ~~the--compensation--of--all--the--condemnation--commissioners.~~

1 ~~if both parties appeal, the commissioners shall be~~
2 ~~said as provided in subsection (4)(a).~~"

3 NEW SECTION. Section 2. Effective date. This act is
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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) 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;~~

1 ~~{f}--that--he--has--not--been--convicted--of--malfeasance--in~~
2 ~~office--or--any--felony--or--other--high--crime;~~

3 ~~{g}--that--he--is--not--related--within--the--sixth--degree--to~~
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17 ~~{f}{g}{h}{i}~~ At the time of such meeting and nominations,
18 there shall be filed with the court by each nominating party
19 or judge an affidavit of the person so nominated stating
20 substantially as follows:

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22 belief as to the compensation to be awarded in the
23 proceeding or as to the fairness or unfairness of the
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25 defendants;

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2 any party and has not discussed, communicated, or overheard
3 or read any discussion or communication from any party
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7 he is willing to serve and will well and truly try the
8 issues of compensation and render a true decision according
9 to the evidence and in compliance with the instructions of
10 the court;

11 (d) that he will not discuss the case with anyone
12 except the other commissioners until a decision has been
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15 of the condemnation commissioners, which may not exceed \$250
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17 shall pay the compensation of the commissioner--be
18 COMMISSIONERS nominated--and--the--cost--of--compensating--the
19 third--commissioner--must--be--divided--equally--between--the
20 parties.

21 ~~{b}--if--the--decision--of--the--condemnation--commissioners~~
22 ~~is--appealed--pursuant--to--78-38-384--and--the--appealing--party~~
23 ~~does--not--receive--an--amount--that--exceeds--the--amount~~
24 ~~recommended--by--the--commissioner--the--appealing--party--shall--pay~~
25 ~~the--compensation--of--all--the--condemnation--commissioners;~~

1 ~~that if both parties appear, the commissioners shall be~~
2 ~~paid as provided in subsection (f)(1)(a)~~
3 NEW SECTION. Section 2. Effective date. This act is
4 effective July 1, 1983.

-End-