

HOUSE BILL NO. 825

INTRODUCED BY JACOBSEN, BERTELSEN, BARDANOUVE, KEMMIS,  
OCHSNER, DONALDSON, REAM, SOLBERG, BACHINI,  
ASAY, SHONTZ, SCHYE, THOPT

IN THE HOUSE

February 15, 1983	Introduced and referred to Committee on Natural Resources.
February 22, 1983	Committee recommend bill do pass as amended. Report adopted.
	Bill printed and placed on members' desks.
February 23, 1983	Second reading, do pass.
	Considered correctly engrossed.
	Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 1, 1983	Introduced and referred to Committee on Judiciary.
March 12, 1983	Committee recommend bill be concurrent in as amended. Report adopted.
March 15, 1983	On motion, taken from second reading, and rereferred to Committee on Judiciary.
March 18, 1983	Committee recommend bill be concurrent in as amended. Report adopted.
March 22, 1983	Second reading, concurrent in.
March 24, 1983	Third reading, concurrent in. Ayes, 48; Noes, 0.

IN THE HOUSE

March 24, 1983

Returned to House with amendments.

March 31, 1983

Second reading, pass consideration.

On motion, Senate amendments taken from second reading and referred to Committee on Judiciary.

April 6, 1983

Committee recommend Senate amendments be not concurred in.

On motion, Senate amendments placed on second reading this day.

Second reading, amendments not concurred in.

On motion, Free Conference Committee requested and appointed.

April 9, 1983

Free Conference Committee reported.

April 12, 1983

Second reading, Free Conference Committee report adopted.

April 13, 1983

Third reading, Free Conference Committee report adopted.

April 16, 1983

Free Conference Committee report adopted by Senate.

Sent to enrolling.

Reported correctly enrolled.

1 *House* BILL NO. *825*  
 2 INTRODUCED BY *Michael B. Bantman, Kenneth*  
 3 *Edmund Ream, Bashini, Gary J. Rehn*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE *Thoff*  
 5 EMINENT DOMAIN LAWS; AMENDING SECTIONS 70-30-101, 70-30-102,  
 6 70-30-110, 70-30-111, 70-30-201 THROUGH 70-30-203,  
 7 70-30-205, 70-30-207, 70-30-301, 70-30-302, 70-30-304,  
 8 70-30-308 THROUGH 70-30-310, AND 70-30-313, MCA; REPEALING  
 9 SECTIONS 69-13-104, 70-30-104, 70-30-204, 70-30-206,  
 10 70-30-305, 70-30-311, 70-30-321, 70-30-322, 82-2-201 THROUGH  
 11 82-2-212, 82-2-221 THROUGH 82-2-224, AND 82-10-301 THROUGH  
 12 82-10-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
 13  
 14 WHEREAS, Title 70, chapter 30, MCA, is in need of  
 15 revision; and  
 16 WHEREAS, the Legislature finds that the rights, duties,  
 17 and procedures set out in this act are necessary to  
 18 implement the provisions of Article II, section 29, of the  
 19 Montana Constitution.  
 20 THEREFORE, it is the intent of the Legislature that the  
 21 use of the power of eminent domain be limited to the state,  
 22 its political subdivisions, and certain other entities; that  
 23 the power of eminent domain be used for purposes that  
 24 directly benefit and are available to the public; that  
 25 persons whose property is taken be accorded the same rights

1 and obligations as other civil litigants; that condemnors  
 2 may acquire only the minimum property rights necessary for  
 3 the public use involved and must pay to the condemnee the  
 4 value of the property as determined by its highest and best  
 5 use; and that condemnors have no right to enter the property  
 6 sought to be condemned until a court determines that the  
 7 exercise of the right of eminent domain is proper and in  
 8 accordance with the requirements of Title 70, chapter 30,  
 9 MCA, as amended by this act.

10  
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 12 Section 1. Section 70-30-101, MCA, is amended to read:  
 13 "70-30-101. Eminent domain defined ~~as public use~~  
 14 ~~extent of taking.~~ All Eminent domain is the right of ~~the~~  
 15 ~~state~~ to take private property for public use. This right  
 16 may be exercised ~~only by the state; local governments;~~  
 17 ~~authorities, districts, and school districts; rural electric~~  
 18 ~~and telephone cooperatives; and publicly regulated utilities~~  
 19 ~~and only~~ in the manner provided in this chapter. ~~When the~~  
 20 ~~legislature provides by statute that a use, purpose, object,~~  
 21 ~~or function is one for which the power of eminent domain may~~  
 22 ~~be exercised, such action is a declaration by the~~  
 23 ~~legislature that the use, purpose, object, or function is a~~  
 24 ~~public use.~~  
 25 (2) ~~When private property is taken by eminent domain,~~

1 only the minimum estate in land needed for the purpose of  
2 the taking may be taken.

3 (3) If the use for which property is taken ends, the  
4 estate taken or the remainder of it reverts back to the  
5 person from whom the property was taken.

6 (4) If the time during which property is or may be  
7 taken for a particular public use is limited by statutes,  
8 agreements, an instrument of taking, or a court order, that  
9 time may be extended if the person from whom the property  
10 was taken agrees or if the district court for the judicial  
11 district in which the property is located finds that the  
12 particular public use for which the property was taken is  
13 still active and necessary.

14 (5) (a) If the acquisition of only part of a property  
15 would leave its owner with an uneconomic remnant, the  
16 condemnor must offer to acquire the remnant and may acquire  
17 it by purchase or by condemnation if the owner consents.

18 (b) For purposes of this section, "uneconomic remnant"  
19 means a remainder estate in land condemned or a piece of  
20 land not condemned that is, following a partial taking of  
21 property, of little value.

22 (6) When an offer to purchase property or a taking of  
23 property occurs, the estate taken must be valued on the  
24 basis of its highest and best use, and it may not be  
25 presumed that the current use is the highest and best use.

1 The person seeking to take property and the person from whom  
2 the property is to be taken must at all times make a good  
3 faith effort to reach a result that is satisfactory to both  
4 parties."

5 Section 2. Section 70-30-102, MCA, is amended to read:

6 "70-30-102. Public uses enumerated. (1) Subject to the  
7 provisions of this chapter, the right of eminent domain may  
8 be exercised in behalf of the following public uses:

9 (1)(a) all public uses authorized by the government of  
10 the United States;

11 (1)(b) public buildings and grounds for the use of the  
12 state and all other public uses authorized by the  
13 legislature of the state;

14 (1)(c) public buildings and grounds for the use of any  
15 county, city or town, or school district; canals, aqueducts,  
16 flumes, ditches, or pipes conducting water, heat, or gas for  
17 the use of the inhabitants of any county, city, or town;  
18 raising the banks of streams, removing obstructions  
19 therefrom, and widening, deepening, or straightening their  
20 channels; roads, streets, and alleys and all other public  
21 uses for the benefit of any county, city, or town or the  
22 inhabitants thereof, which may be authorized by the  
23 legislature; but the mode of apportioning and collecting the  
24 costs of such improvements shall be such as may be provided  
25 in the statutes or ordinances by which the same may be

1 authorized;

2 (4)--wharves--docks--piers--chutes--booms--ferries  
3 bridges--of--all--kinds--private-roads--plank-and-turnpike  
4 roads--railroads--cannals--ditches--flumes--aqueducts--and  
5 pipes--for--public-transportation--supplying--mines--mills--and  
6 smelters--for--the--reduction--of--ores--and--farming--neighborhoods  
7 with--water--and--drainage--and--reclaiming--lands--and--for  
8 floating--logs--and--timber--on--streams--not--navigable--and--sites  
9 for--reservoirs--necessary--for--collecting--and--storing--waters  
10 However--such--reservoir--sites--must--possess--a--public--use  
11 demonstrable--to--the--district--court--as--the--highest--and--best  
12 use--of--the--lands

13 (5)(d) roads--tunnels--ditches--flumes--pipes--and  
14 dumping--places--for--working--mines--mills--or--smelters--for--the  
15 reduction--of--ores--also--outlets--natural--or--otherwise--for  
16 the--flow--deposit--or--conduct--of--tailings--or--refuse--matter  
17 from--mines--mills--and--smelters--for--the--reduction--of--ores  
18 also--an--occupancy--in--common--by--the--owners--or--the--possessors  
19 of--different--mines--of--any--place--for--the--flow--deposit--or  
20 conduct--of--tailings--or--refuse--matter--from--their--several  
21 mines--mills--or--smelters--for--reduction--of--ores--and--sites  
22 for reservoirs necessary for collecting and storing water.  
23 However, such reservoir sites must possess a public use  
24 demonstrable to the district court as the highest and best  
25 use of the land.

1 (6)(e) private roads leading from highways to private  
2 property--including residences or farms;

3 (7)(f) telephone or electric light lines;

4 (8)--telegraph--lines

5 (9)(g) sewerage of any city, county, or town or any  
6 subdivision thereof, whether incorporated or unincorporated,  
7 or of any settlement consisting of not less than 10 families  
8 or of any public buildings belonging to the state or to any  
9 college or university;

10 (10)(h) tramway lines;

11 (11)(i) electric power lines;

12 (12)--logging--railways

13 (13)--temporary--logging--roads--and--banking--grounds--for  
14 the--transportation--of--logs--and--timber--products--to--public  
15 streams--lakes--mills--railroads--or--highways--for--such--time  
16 as--the--court--or--judge--may--determine--provided--the--grounds  
17 of--state--institutions--be--excepted

18 (14)--underground--reservoirs--suitable--for--storage--of  
19 natural--gas

20 (15)--to--mine--and--extract--ores--metals--or--minerals  
21 owned--by--the--plaintiff--located--beneath--or--upon--the--surface  
22 of--property--where--the--title--to--said--surface--vests--in--others  
23 However--the--use--of--the--surface--for--strip--mining--or--open--pit  
24 mining--of--coal--(five)--any--mining--method--or--process--in--which  
25 the--strata--or--overburden--is--removed--or--displaced--in--order--to

1 ~~extract the coal} is not a public use, and eminent domain~~  
 2 ~~may not be exercised for this purpose}~~

3 ~~{to} (1) to restore and reclaim lands strip or~~  
 4 ~~underground-mined for coal and not reclaimed in accordance~~  
 5 ~~with Title 82, chapter 4, part 2, and to abate or control~~  
 6 ~~adverse affects of strip or underground mining on those~~  
 7 ~~lands.~~

8 ~~(2) The use of the surface for strip mining or open~~  
 9 ~~pit mining of coal (i.e., any mining method or process in~~  
 10 ~~which the strata or overburden is removed or displaced in~~  
 11 ~~order to extract the coal) is not a public use, and eminent~~  
 12 ~~domain may not be exercised for this purpose."~~

13 Section 3. Section 70-30-110, MCA, is amended to read:

14 "70-30-110. Survey and ~~location of property to be~~  
 15 ~~taken -- greatest public good -- least private injury --~~  
 16 ~~damages -- entry orders. In all cases where land is required~~  
 17 ~~for public use, the state or its agents in charge of such~~  
 18 ~~use may survey and locate the same, but it must be located~~  
 19 ~~in the manner which will be most compatible with the~~  
 20 ~~greatest public good and the least private injury and~~  
 21 ~~subject to the provisions of 70-30-206. The state or its~~  
 22 ~~agents in charge of such public use may enter upon the land~~  
 23 ~~and make examinations, surveys, and maps thereof, and such~~  
 24 ~~entry shall constitute no cause of action in favor of the~~  
 25 ~~owners of the land except from injuries resulting from~~

1 ~~negligence, wantonness, or malice: (1) A condemnor and its~~  
 2 ~~agents and employees may enter upon real property and make~~  
 3 ~~surveys, examinations, photographs, tests, soundings,~~  
 4 ~~borings, and samplings or engage in other activities for the~~  
 5 ~~purpose of appraising the property or determining whether it~~  
 6 ~~is suitable and within the power of the condemnor to take~~  
 7 ~~for public use, if the entry is:~~

8 ~~(a) preceded by notice to the owner and any other~~  
 9 ~~person known to be in actual physical occupancy of the~~  
 10 ~~property of the time, purpose, and scope of the planned~~  
 11 ~~entry and activities;~~

12 ~~(b) undertaken during reasonable daylight hours;~~

13 ~~(c) accomplished peaceably and without inflicting~~  
 14 ~~substantial injury; and~~

15 ~~(d) not in violation of any other law.~~

16 ~~(2) The entry and activities authorized by this~~  
 17 ~~section do not constitute a trespass, but the condemnor is~~  
 18 ~~liable for resulting damages.~~

19 ~~(3) If reasonable efforts to accomplish a lawful entry~~  
 20 ~~or to perform authorized activities upon real property have~~  
 21 ~~been obstructed or denied, the condemnor may, upon notice to~~  
 22 ~~the owner and occupier of the property, apply to the~~  
 23 ~~district court for the judicial district in which the~~  
 24 ~~property or any part is located for an order permitting~~  
 25 ~~entry. Unless good cause to the contrary is shown, the court~~

~~shall, following a hearing, make an order permitting and describing the purpose of the entry and setting forth the nature and scope of activities the court determines are reasonably necessary and authorized to be made upon the property. The order may include terms and conditions with respect to the time, place, and manner of entry and authorized activities upon the property that will facilitate the purpose of the entry and minimize damage, hardship, and burden.~~

~~(4) An order permitting entry must include a determination by the court of the probable amount that will fairly compensate the owner and any other person in lawful possession or physical occupancy of the property for physical injury to the property and for substantial interference with its possession or use found likely to be caused by the entry and activities authorized by the order and must require the condemnor to deposit that amount with the court before entry. Unless sooner disbursed by court order, the amount deposited shall be retained on deposit for 6 months following termination of the entry. The court may, for good cause, extend the period of retention."~~

Section 4. Section 70-30-111, MCA, is amended to read:

"70-30-111. Facts necessary to be found before condemnation. Before property can be taken, it must appear:

(1) that the use to which it is to be applied is a

public use authorized by law;

(2) that the taking is necessary to such use;

(3) if already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use; and

~~(4) that a good faith effort to purchase the minimum estate required at a valuation equal to the highest and best use has been made and failed."~~

**NEW SECTION.** Section 5. Purchase of property. An action to condemn property may not be maintained unless the condemnor has made a good faith effort to purchase the minimum estate necessary for the public use involved, at a valuation at least equal to the highest and best use.

**NEW SECTION.** Section 6. Coercion prohibited. A condemnor may not take any coercive action to compel a sale, a particular sale price, or any condition or clause of a sale agreement.

Section 7. Section 70-30-201, MCA, is amended to read:

"70-30-201. Applicable rules of practice. Except as otherwise provided in this chapter, the provisions of ~~Titles 25 and 26, including the Montana Rules of Civil Procedure and the Montana Rules of Evidence,~~ are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter."

Section 8. Section 70-30-202, MCA, is amended to read:

"70-30-202. Jurisdiction and venue -- complaint and summons required. All proceedings under this chapter must be brought in the district court of the county judicial district in which the property or some part thereof is situated. They must be commenced by filing a complaint and issuing a summons thereon."

Section 9. Section 70-30-203, MCA, is amended to read:

"70-30-203. Contents of complaint. The complaint must contain:

(1) the name of the ~~corporation or association~~ ~~commissioner~~ entity 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 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 the estate desired in 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 and a statement that the estate or estates desired are the minimum

necessary estates. ~~Att~~ The court may require that all parcels lying in the county judicial district 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 a town or a county, the county commissioners of the county may be named as plaintiff.

~~{6} if a sandy stratum or formation suitable for use as an underground natural gas storage reservoir is sought to be appropriated a description thereof and of the land in which it is alleged to be contained and a description of all other property and rights sought to be appropriated for use in connection with the appropriation of the right to store natural gas in and withdraw natural gas from such reservoir in addition the complaint shall state facts showing that the underground reservoir is one subject to appropriation by plaintiff also stating that the underground storage of natural gas in the land sought to be appropriated is in the public interest that the underground reservoir is suitable and practicable for natural gas storage that the plaintiff in good faith has been unable to acquire the rights sought to be appropriated hereunder and a statement that the rights~~



1 and-property-sought-to-be-appropriated-are-not-prohibited-by  
 2 law-and-in-addition-the-complaint-must-be-accompanied-by-a  
 3 certificate--from--the--board-of-oil-and-gas-conservation-as  
 4 set-forth-in-82-18-384.

5 (6) a statement of the public use involved; and  
 6 (7) a statement that a good faith effort to purchase  
 7 the minimum estate necessary has been made and has failed."

8 Section 10. Section 70-30-205, MCA, is amended to  
 9 read:

10 "70-30-205. Who may defend -- answer. (1) All persons  
 11 named in the complaint, in occupation of or claiming an  
 12 interest in any of the property described in the complaint  
 13 or in the amount to be awarded for the taking thereof,  
 14 though not named, may appear.

15 (2) The answer of--each--appearing-defendant-must-be  
 16 filed-and-served-upon-the-plaintiff-or-upon-any-attorney-for  
 17 plaintiff-within-a-period-of-15-days-after--the--service--of  
 18 summons-and-complaint must contain a demand that any land or  
 19 estate the defendant wishes to be condemned as an uneconomic  
 20 tenant be condemned as such. The answer of each appearing  
 21 defendant must contain a specific allegation as to the total  
 22 amount which such defendant claims is reasonable and just  
 23 for--the--taking--of--such--defendant's--lands-or-other-real  
 24 property-or-interest-therein."

25 Section 11. Section 70-30-207, MCA, is amended to

1 read:

2 "70-30-207. Appointment of commissioners --  
 3 qualifications -- affidavit. (1) Immediately upon making and  
 4 entering the preliminary condemnation order filing of the  
 5 last answer, the judge must meet with the respective parties  
 6 or their attorneys of record for the purpose of appointing  
 7 condemnation commissioners to ascertain and determine the  
 8 amount to be paid by the plaintiff to each owner or other  
 9 persons interested in such property by reason of the  
 10 appropriation of 20% estate in such property. The  
 11 appointment of condemnation commissioners and the commission  
 12 hearing may be waived by written consent of both parties, in  
 13 which case the proceeding shall be conducted in the district  
 14 court as if the case had been appealed from an award by such  
 15 commissioners.

16 (2) The court must thereupon appoint three qualified,  
 17 disinterested condemnation commissioners, unless appointment  
 18 has--been--waived. One of such commissioners shall be  
 19 nominated by the party or parties plaintiff. One of such  
 20 commissioners shall be nominated by the party or parties  
 21 defendant. The third commissioner shall be the chairman and  
 22 shall be nominated by the two commissioners previously  
 23 nominated. However, if said two commissioners fail to make  
 24 such choice at the time of their appointment, then such  
 25 nomination shall be made by the presiding judge.

1        (3) Each commissioner shall possess the following  
2        qualifications:

3        (a) a citizen of the United States and over 18 years  
4        of age;

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

6        (c) that he is in possession of natural faculties of  
7        ordinary intelligence and not decrepit;

8        (d) that he is possessed of sufficient knowledge of  
9        the English language;

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

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

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

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

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

24        (a) that he has formed no unqualified opinion or  
25        belief as to the compensation to be awarded in the

1        proceeding or as to the fairness or unfairness of the  
2        plaintiff's offer for the lands and improvements of the  
3        defendants the estate desired;

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

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

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

17        Section 12. Section 70-30-301, MCA, is amended to  
18        read:

19        "70-30-301. Hearing -- judge to preside --  
20        determinations by commissioners. (1) Immediately upon  
21        nomination and appointment of commissioners under 70-30-207,  
22        the same shall proceed to meet at the time and place stated  
23        in the order appointing them, which time shall not be more  
24        than 10 days after the order of appointing, and proceed to  
25        examine the lands in which an estate is sought to be

1 appropriated. At a time appointed by the judge and within  
2 said 10-day period they shall hear the allegations and  
3 evidence of all persons interested in each of the several  
4 parcels of land.

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

8 (3) The trier of fact shall determine:

9 (a) whether an estate in the property must necessarily  
10 be taken for a public use;

11 (b) the minimum estate to be taken;

12 (c) whether the condemnor will be required to take an  
13 uneconomic remnant as defined in 70-30-101;

14 (d) whether the parties have acted in good faith; and

15 (e) whether the condemnor has made a good faith effort  
16 to purchase an estate in the property.

17 (3)(4) At the conclusion of the aforesaid hearing, the  
18 court or judge shall instruct the commissioners as to the  
19 law applicable to their deliberations and shall instruct  
20 them that their duty is to determine, solely upon the basis  
21 of said examination of lands, the evidence produced at the  
22 hearing or hearings, and the instructions of the court, the  
23 following:

24 (a) the current fair market value at its highest and  
25 best use of the property--sought--to--be--appropriated--and

1 estate granted the condemnor by the judge, including all  
2 improvements thereon pertaining to the realty and--of--each  
3 and--every--separate--estate--and--interest--therein. If it  
4 consists of different parcels are involved, the current fair  
5 market value of the estate granted in each parcel and--each  
6 estate--or--interest--therein must be separately assessed.

7 (b) if the property in which an estate is sought to be  
8 appropriated constitutes only a part of a larger parcel, the  
9 depreciation in current fair market value at its highest and  
10 best use which will accrue to the portion not sought to be  
11 condemned by reason of its severance from the portion sought  
12 to be condemned and the construction of the improvements in  
13 the manner proposed by the plaintiff;

14 (c) separately, how much the portion not sought to be  
15 condemned and each estate or interest therein will be  
16 benefited, if at all, by the construction of the  
17 improvements proposed by the plaintiff; and if the benefit  
18 shall be equal to the amount assessed under subsection  
19 (3)(4)(b), the owner of the parcel shall be allowed no  
20 compensation except the value of the portion estate taken;  
21 but if the benefits shall be less than the amount assessed  
22 under subsection (3)(4)(b), the former shall be deducted  
23 from the latter, and the remainder shall be the only amount  
24 allowed in addition to the current fair market value;

25 (d) if--the--property--sought--to--be--condemned--be--for--a

~~railroad, the cost of good and sufficient fences along the line of such railroad and the cost of cattle guards where fences may cross the line of such railroad the current fair market value at its highest and best use of any uneconomic remnant the court requires the condemnor to take.~~

~~(4)(5) Where there are two or more estates or divided interests in property sought to be condemned, the plaintiff is entitled to have the amount of the award for said the estate granted in the property first determined, as hereinbefore stated, as between plaintiff and all defendants claiming any interests therein. Thereafter in the same proceeding the respective rights of each of such defendants in and to the award shall be determined by the commissioners, under supervision and instruction of the court, and the award apportioned accordingly.~~

~~(6) Following the trier of fact's determinations under subsection (3) and prior to the commissioners' determinations under subsections (4) and (5), the court may enter an order allowing the condemnor to take possession of the estate granted by the court.~~

~~(7) Costs must be assessed in favor of a condemnee and against a condemnor who either terminates an action prior to entry of a final condemnation order or is ordered to pay a greater amount for the estate granted than was offered by the condemnor pursuant to [section 5]."~~

Section 13. Section 70-30-302, MCA, is amended to read:

"70-30-302. Assessing compensation -- date and measure -- interest. (1) For the purpose of assessing compensation, the right thereto shall be deemed to have accrued at the date of the service of the summons, and its current fair market value for its highest and best use as of that date shall be the measure of compensation for ~~all~~ property ~~any~~ estate to be actually taken and the basis of depreciation in the current fair market value of property not actually taken but injuriously affected. This shall not be construed to limit the amount of compensation payable by the department of highways under the provisions of any legislation enacted pursuant to the federal Highway Beautification Act of 1965.

(2) If an order be made letting the plaintiff into possession, ~~as provided in 70-30-311~~ the full amount finally awarded shall draw interest at the rate of 10% per annum from the date of the service of the summons to the earlier of the following dates:

(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

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

(3) If the property owner withdraws from court a

fraction of the amount finally awarded, interest on such fraction shall cease on the date it is withdrawn but interest on the remainder of the amount finally awarded shall continue to the earlier of the aforesaid dates defined in (2)(a) and (2)(b) of this section until the full amount is withdrawn from the court.

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

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

Section 14. Section 70-30-304, MCA, is amended to read:

"70-30-304. Appeal to district court from assessment of commissioners. (1) An appeal from any assessment made by the commissioners may be taken and prosecuted in the court where the report of said commissioners is filed by any party interested. Such appeal must be taken within the period of 30 days after the service upon appellant of the notice of the filing of the award by the service of notice of such appeal upon the opposing party or his attorney in such proceedings and the filing of the same in the district court

wherein the action is pending, and the same shall be brought on for trial upon the same notice and in the same manner as other civil actions, and unless a jury shall be waived by the consent of all parties to such appeal, the same shall be tried by jury, and the amount to which appellant may be entitled, by reason of the appropriation of an estate in his property, shall be reassessed upon the same principle as hereinbefore prescribed for the assessment of such amount by commissioners.

(2) Upon any verdict or assessment by commissioners becoming final, judgment shall be entered declaring that upon payment of such verdict or assessment, together with the interests and costs allowed by law, if any, the right to construct and maintain ~~the highway, railroad, or other any~~ public work or improvement and to ~~take, use, and appropriate~~ the ~~estate in the~~ property described in such verdict or assessment for the use and purposes for which said land has been condemned shall, as against the parties interested in such verdict or assessment, be and remain in the plaintiff and his or its heirs, successors, or assigns ~~forever to the extent and for the time stated in the judge's determination of the estate granted.~~

(3) In case the party appealing from the award of the commissioners in any proceeding, as aforesaid, shall not succeed in changing to his advantage the amount finally

awarded in such proceeding, he shall not recover the costs of such appeal, but all the costs of the appellee upon such appeal shall be taxed against and recovered from the appellant; provided, that upon the trial of such appeal, the plaintiff may contest the right of any party or parties thereto to an estate in any of the property mentioned and set forth or involved in said appeal, ~~which if the property~~ was located after the preliminary survey of ~~any such a~~ highway or railroad, ~~and the party is~~ seeking to condemn its right-of-way under and pursuant to the provisions of this chapter, provided such condemnation proceedings are begun within 1 year after such preliminary survey."

Section 15. Section 70-30-308, MCA, is amended to read:

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

(a) ~~if a fee-simple interest in the defendant's land is taken~~ on an annual basis, utilizing the installment contract method; or

(b) if other land is reasonably available and the plaintiff consents, by means of a land exchange between the

defendants and plaintiffs if the land to be provided by the plaintiffs in the exchange is of equal or more value than the land being condemned ~~or.~~

~~(c) if an easement over or through the defendant's property is involved, in either a single payment or in not more than five consecutive annual installments.~~

(2) If the estate granted by the court is a leasehold, the rent must be paid annually or semiannually at the option of the lessor. The judge may provide that the amount of the payments be renegotiated at intervals set by the judge. The judge may also entertain a motion by either party for modification of the payments. Such renegotiation or modification must be commenced by a complaint and answer and determined in accordance with the procedure set out in 70-30-201 through 70-30-207 and 70-30-301 through 70-30-306.

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

Section 16. Section 70-30-309, MCA, is amended to read:

"70-30-309. Final order of condemnation -- contents --

vesting upon filing. (1) When payments have been made and the bond given, if the plaintiff elects to give one, as required by 70-30-307 and 70-30-308, the court or judge must make a final order of condemnation, which must describe the ~~estate granted in the~~ property condemned and the purposes of such condemnation.

(2) A copy of the order must be filed in the office of the county clerk and recorder, and thereupon the property ~~estate~~ described therein shall vest in the plaintiff for the purposes therein specified."

Section 17. Section 70-30-310, MCA, is amended to read:

"70-30-310. New proceedings to cure defective title. If the ~~title ownership rights in the estate~~ attempted to be ~~acquired--is granted by the judge's order~~ are found to be defective from any cause, the plaintiff may again institute proceedings to acquire the same, as in this chapter prescribed."

Section 18. Section 70-30-313, MCA, is amended to read:

"70-30-313. Current fair market value. Current fair market value is the price that would be agreed to by a willing and informed seller and buyer, taking into consideration, but not limited to, the following factors:

(1) the highest and best ~~reasonably-available~~ use of

the property and its value for such use, ~~provided that the current use may not be presumed to be the highest and best use;~~

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

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

~~NEW SECTION.~~ Section 19. Repealer. Sections 69-13-104, 70-30-104, 70-30-204, 70-30-206, 70-30-305, 70-30-311, 70-30-321, 70-30-322, 82-2-201 through 82-2-212, 82-2-221 through 82-2-224, and 82-10-301 through 82-10-305, MCA, are repealed.

~~NEW SECTION.~~ Section 20. Codification instruction. Sections 5 and 6 are intended to be codified as an integral part of Title 70, chapter 30, part 1, and the provisions of Title 70, chapter 30, apply to sections 5 and 6.

~~NEW SECTION.~~ Section 21. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun prior to the effective date of this act.

~~NEW SECTION.~~ Section 22. Effective date. This act is effective on passage and approval.

-End-

Approved by Committee  
on Natural Resources

1 HOUSE BILL NO. 825  
2 INTRODUCED BY JACOBSEN, BERTELSEN, BARDAMOUVE, KEMMIS,  
3 OCHSNER, DONALDSON, REAM, SOLBERG, BACHINI,  
4 ASAY, SHONTZ, SCHYE, THOFT  
5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
7 EMINENT DOMAIN LAWS; AMENDING SECTIONS ~~70-30-101, 70-30-102,~~  
8 ~~70-30-110, 70-30-111, 70-30-201~~ THROUGH ~~70-30-203,~~  
9 ~~70-30-205, 70-30-207, 70-30-301, 70-30-302, 70-30-304,~~  
10 ~~70-30-308~~ THROUGH ~~70-30-310~~ AND ~~70-30-313~~; MCA; REPEALING  
11 SECTIONS ~~69-13-104, 70-30-104, 70-30-204, 70-30-206,~~  
12 ~~70-30-305, 70-30-311, 70-30-321, 70-30-322, 82-2-201~~ THROUGH  
13 ~~82-2-212, 82-2-221~~ THROUGH ~~82-2-224~~ AND ~~82-10-301~~ THROUGH  
14 ~~82-10-305~~; MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE  
15 70-30-104, 70-30-111, 70-30-201 THROUGH 70-30-203,  
16 70-30-206, 70-30-207, 70-30-308, 70-30-309, 70-30-311, AND  
17 70-30-313, MCA; REPEALING SECTIONS 70-30-204 AND 70-30-205,  
18 MCA."  
19  
20 WHEREAS, ~~title 70, chapter 30, MCA, is in need of~~  
21 ~~revision and~~  
22 ~~WHEREAS, the Legislature finds that the rights, duties,~~  
23 ~~and procedures set out in this act are necessary to~~  
24 ~~implement the provisions of Article II, section 29, of the~~  
25 ~~Montana Constitution;~~

1 ~~THEREFORE, it is the intent of the Legislature that the~~  
2 ~~use of the power of eminent domain be limited to the state,~~  
3 ~~its political subdivisions, and certain other entities, that~~  
4 ~~the power of eminent domain be used for purposes that~~  
5 ~~directly benefit and are available to the public, that~~  
6 ~~persons whose property is taken be accorded the same rights~~  
7 ~~and obligations as other civil litigants, that condemnors~~  
8 ~~may acquire only the minimum property rights necessary for~~  
9 ~~the public use involved and must pay to the condemnee the~~  
10 ~~value of the property as determined by its highest and best~~  
11 ~~use, and that condemnors have no right to enter the property~~  
12 ~~sought to be condemned until a court determines that the~~  
13 ~~exercise of the right of eminent domain is proper and in~~  
14 ~~accordance with the requirements of Title 70, chapter 30,~~  
15 ~~MCA, as amended by this act.~~  
16

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

18 Refer to Introduced Bill

19 (Strike everything after the enacting clause and insert:)

20 Section 1. Section 70-30-104, MCA, is amended to read:

21 "70-30-104. What estates and rights in land may be  
22 taken. The following is a classification of the estates and  
23 rights in lands subject to be taken for the public use:

24 (1) such estate or rights as may be necessary up to  
25 and including a fee simple when taken for public buildings



1 or grounds or for permanent buildings or for an outlet for a  
 2 flow or a place for the deposit of debris or tailings of a  
 3 mine or for the mining and extracting of ores, metals, or  
 4 minerals when the same are owned by the plaintiff but  
 5 located beneath or upon the surface of property where the  
 6 title to said surface vests in others or for the underground  
 7 storage of natural gas by a natural gas public utility as  
 8 defined in 82-10-301. When the appropriation is for the  
 9 underground storage of natural gas, all of the right, title,  
 10 interest, and estate in the real property and in the subsand  
 11 stratum, formation, or reservoir so appropriated shall be  
 12 determinable and for all purposes terminate upon abandonment  
 13 or upon cessation for the period of 1 year of the use for  
 14 which the same was appropriated, and thereupon the ownership  
 15 of the residue of natural gas therein remaining shall  
 16 likewise vest in the then owners of such reservoir space.

17 (2) such estate or rights in the surface as are  
 18 necessary for a reservoir or dam and for the permanent  
 19 flooding that results, up to the edge of the maximum pool of  
 20 the reservoir;

21 (3) ~~an easement, leasehold, or license, for so long as~~  
 22 ~~the interest is necessary for the purpose described in the~~  
 23 ~~complaint, or fee simple~~ when taken for any other use;

24 (4) the right of entry upon and occupation of land and  
 25 the right to take therefrom such earth, gravel, stones,

1 trees, and timber as may be necessary for some public use."

2 Section 2. Section 70-30-111, MCA, is amended to read:

3 "70-30-111. Facts necessary to be found before  
 4 condemnation. Before property can be taken, it must appear:

5 (1) that the use to which it is to be applied is a use  
 6 authorized by law;

7 (2) that the taking is necessary to such use;

8 (3) if already appropriated to some public use, that  
 9 the public use to which it is to be applied is a more  
 10 necessary public use;

11 ~~(4) that a reasonable effort to purchase the property~~  
 12 ~~was sought and a written offer was made and rejected; and~~

13 ~~(5) that the public interest requires the taking."~~

14 Section 3. Section 70-30-201, MCA, is amended to read:

15 "70-30-201. Applicable rules of practice. Except as  
 16 otherwise provided in this chapter, the provisions of ~~Title~~  
 17 ~~Titles 25 and 26, including the Montana Rules of Civil~~  
 18 ~~Procedure and the Montana Rules of Evidence,~~ are applicable  
 19 to and constitute the rules of practice in the proceedings  
 20 mentioned in this chapter."

21 Section 4. Section 70-30-202, MCA, is amended to read:

22 "70-30-202. Jurisdiction and venue -- complaint and  
 23 summons required. All proceedings under this chapter must be  
 24 brought in the district court of the county in which the  
 25 property or some part thereof is situated. They must be

commenced by filing a complaint and issuing a summons thereon. ~~A summons served under this chapter must contain a notice to the defendant to file and serve an answer to the issue of public necessity and to appear and show cause at a time and place specified therein why the property described should not be condemned as prayed for in the complaint.~~

Section 5. Section 70-30-203, MCA, is amended to read:

"70-30-203. Contents of complaint. The complaint must contain allege:

(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 of plaintiff;

~~(4) statements of each of the facts necessary to be found in 70-30-111.~~

~~(4)(5)~~ 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)(6)~~ a description of each piece-of-land interest in real property 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 a town or a county, the county commissioners of the county may be named as plaintiff.~~

~~(6)(7)~~ If a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir is sought to be appropriated, a description thereof and of the land in which it is alleged to be contained and a description of all other property and rights sought to be appropriated for use in connection with the appropriation of the right to store natural gas in and withdraw natural gas from such reservoir. In addition, the complaint shall state facts showing that the underground reservoir is one subject to appropriation by plaintiff; also stating that the underground storage of natural gas in the land sought to be appropriated is in the public interest; that the underground reservoir is suitable and practicable for natural gas storage; that the plaintiff in good faith has been unable to acquire the rights sought to be appropriated hereunder and a statement that the rights and property sought to be

1 appropriated are not prohibited by law; and in addition, the  
2 complaint must be accompanied by a certificate from the  
3 board of oil and gas conservation as set forth in  
4 82-10-304."

5 Section 6. Section 70-30-206, MCA, is amended to read:

6 "70-30-206. Powers of court -- preliminary  
7 condemnation order. (1) The court or-judge has power to:

8 (a) regulate and determine the place and manner of  
9 making the connections and crossings and enjoying the common  
10 uses mentioned in 70-30-103(1)(a) and of the occupying of  
11 canyons, passes, and defiles for railroad purposes, as  
12 permitted and regulated by the laws of this state of of the  
13 United States; or

14 (b) ~~determine whether or not the use for which the~~  
15 ~~property is sought to be appropriated is a public use within~~  
16 ~~the meaning of the laws of this state; limit the interest in~~  
17 ~~real property sought to be appropriated if in the opinion of~~  
18 ~~the court the interest sought is not necessary.~~

19 ~~(c) limit the amount of property sought to be~~  
20 ~~appropriated if in the opinion of the court or judge the~~  
21 ~~quantity sought to be appropriated is not necessary.~~

22 (2) If the court or-judge is satisfied from the  
23 evidence presented ~~at the hearing provided for in 70-30-204~~  
24 that the public interests--require interest requires the  
25 taking of such ~~lands~~ interest in real property and that the

1 facts necessary to be found before condemnation appear, it  
2 or--he must forthwith make and enter a preliminary  
3 condemnation order that the condemnation of the ~~land or~~  
4 ~~other interest in~~ real property may proceed in accordance  
5 with the provisions of this chapter.

6 (3) If the property sought to be appropriated is a  
7 sand, stratum, or formation suitable for use as an  
8 underground natural gas storage reservoir and the existence  
9 and suitability of it for such use has been proved by  
10 plaintiff upon substantial evidence, the order of the court  
11 or-judge shall direct the commissioners to ascertain and  
12 determine the amount to be paid by the plaintiff to each  
13 person for his interest in the property sought to be  
14 appropriated for use as such underground natural gas storage  
15 reservoir and/or as the annual rental for the use of such  
16 underground gas storage reservoir and for the use of so much  
17 of the surface as is required in the operation of the  
18 underground gas storage reservoir and for the use in  
19 connection with the creation, operation, and maintenance  
20 thereof and for all the native gas contained in said  
21 reservoir as compensation and damages by reason of the  
22 appropriation of such property. However, the amount to be  
23 paid for such native gas and all thereof shall be no less  
24 than the market value of such gas. The court shall appoint  
25 three persons, qualified as experts and recommended as such

by the board of oil and gas conservation, to assist and advise the commissioners in determining the compensation and damages to be paid by plaintiff to each person for his interest in the property sought to be appropriated, and the fees and expenses of such persons shall be chargeable as costs of the proceedings to be paid by the plaintiff."

Section 7. 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~~ within 10 days of entry of a preliminary condemnation order, the defendant shall file a statement of his claim of just compensation. If within 20 days of service of defendant's claim plaintiff fails to accept the claim, the court must appoint 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

1 any party;

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

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

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

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

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

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

1 filed with the court."

2 Section 8. Section 70-30-308, MCA, is amended to read:  
3 "70-30-308. How payment made -- execution or annulment  
4 for nonpayment. (1) Payment may be made to the defendants  
5 entitled thereto, or the money may be deposited in court for  
6 the defendants and be distributed to those entitled thereto.  
7 However, at the option of the defendants, payments may be  
8 made:

9 (a) ~~if a fee-simple interest in the defendants' land~~  
10 ~~is taken~~, on an annual basis, utilizing the installment  
11 contract method; ~~or~~

12 (b) if other land is reasonably available and the  
13 plaintiff consents, by means of a land exchange between the  
14 defendants and plaintiffs if the land to be provided by the  
15 plaintiffs in the exchange is of equal or more value than  
16 the land being condemned; ~~or~~

17 ~~(c) if an easement over or through the defendants'~~  
18 ~~property is involved in either a single payment or in not~~  
19 ~~more than five consecutive annual installments.~~

20 (2) If the money be not so paid or deposited, the  
21 defendants may have execution as in civil cases, and if the  
22 money cannot be made on execution, the court ~~or judge~~, upon  
23 a showing to that effect, must set aside and annul the  
24 entire proceedings and restore possession of the property to  
25 the defendant if possession has been taken by the

1 plaintiff."

2 Section 9. Section 70-30-309, MCA, is amended to read:

3 "70-30-309. Final order of condemnation -- contents --  
4 vesting upon filing. (1) When payments have been made and  
5 the bond given, if the plaintiff elects to give one, as  
6 required by 70-30-307 and 70-30-308, the court or-judge must  
7 make a final order of condemnation, which must describe the  
8 property condemned and the purposes of such condemnation.

9 (2) A copy of the order must be filed in the office of  
10 the county clerk and recorder, and thereupon the property  
11 described therein shall vest in the plaintiff for the  
12 purposes therein specified."

13 Section 10. Section 70-30-311, MCA, is amended to  
14 read:

15 "70-30-311. Putting plaintiff in possession. (1) At  
16 any time after the filing of the preliminary condemnation  
17 order or after the report and assessment of the  
18 commissioners have been made and filed in the court and  
19 either before or after appeal from such assessment or from  
20 any other order or judgment in the proceedings, the court or  
21 ~~any-judge--thereof--at--chambers~~ upon application of the  
22 plaintiff shall have power to make an order that, upon  
23 payment into court for the defendant entitled thereto of the  
24 amount of compensation claimed by the defendant in his  
25 answer under 70-30-201 or the amount assessed either by the

1 commissioners or by the jury, as the case may be, the  
2 plaintiff be authorized:

3 (a) if already in possession of the property of such  
4 defendant sought to be appropriated, to continue in such  
5 possession; or

6 (b) if not in possession, to take possession of such  
7 property and use and possess the same during the pendency  
8 and until the final conclusion of the proceedings and  
9 litigation and that all actions and proceedings against the  
10 plaintiff on account thereof be stayed until such time.

11 (2) However, where an appeal is taken by such  
12 defendant, the court or-judge may, in its or-his discretion,  
13 require the plaintiff before continuing or taking such  
14 possession, in addition to paying into court the amount  
15 assessed, to give bond or undertaking with sufficient  
16 sureties to be approved by the judge ~~court~~ and to be in such  
17 sum as the court or-judge may direct, conditioned to pay the  
18 defendant any additional damages and costs over and above  
19 the amount assessed, which it may finally be determined that  
20 defendant is entitled to for the appropriation of the  
21 property, and all damages which defendant may sustain if for  
22 any cause such property shall not be finally taken for  
23 public uses.

24 (3) 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. In all cases where the  
 10 plaintiff deposits the amount of the assessment and  
 11 continues in possession or takes possession of the property,  
 12 as herein provided, the defendant entitled thereto, if there  
 13 be no dispute as to the ownership of the property, may at  
 14 any time demand and receive upon order of the court all or  
 15 any part of the money so deposited and shall not by such  
 16 demand or receipt be barred or precluded from his right of  
 17 appeal from such assessment but may, notwithstanding, take  
 18 and prosecute his appeal from such assessment; provided that  
 19 if the amount of such assessment is finally reduced on  
 20 appeal by either party, such defendant who has received all  
 21 or any part of the amount deposited shall be liable to the  
 22 plaintiff for any excess of the amount so received by him  
 23 over the amount finally assessed, with legal interest on  
 24 such excess from the time such defendant received the money  
 25 deposited, and the same may be recovered by action; and

1 provided, further, that upon any appeal from assessment by  
 2 the commissioners to a jury, the jury may find a less as  
 3 well as an equal or greater amount than that assessed by the  
 4 commissioners; and provided, further, that the court shall  
 5 not order the delivery to any defendant of more than 75% of  
 6 the money deposited on his account except upon posting of  
 7 bond by such defendant equal to the amount in excess of 75%,  
 8 with sureties to be approved by the court, to repay to the  
 9 plaintiff such amounts withdrawn as are in excess of his  
 10 final award in the proceedings."

11 Section 11. Section 70-30-313, MCA, is amended to  
 12 read:

13 "70-30-313. Current fair market value. Current fair  
 14 market value is the price that would be agreed to by a  
 15 willing and informed seller and buyer, taking into  
 16 consideration, but not limited to, the following factors:

17 (1) the highest and best reasonably available use of  
 18 the property and its value for such use; provided current  
 19 use may not be presumed to be the highest and best use;

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

22 (3) any other relevant factors as to which evidence is  
 23 offered."

24 NEW SECTION. Section 12. Repealer. Sections 70-30-204  
 25 and 70-30-205, MCA, are repealed.

HB 0825/02

1        ~~NEW SECTION.~~ Section 13. Saving clause. This act does  
2        not affect rights and duties that matured, penalties that  
3        were incurred, or proceedings that were begun prior to the  
4        effective date of this act.

-End-



## 1 HOUSE BILL NO. 825

2 INTRODUCED BY JACOBSEN, BERTELSEN, BARDAMOUVE, KEMMIS,

3 OCHSNER, DONALDSON, REAM, SOLBERG, BACHINI,

4 ASAY, SHONTZ, SCHYE, THOFT

5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE7 EMINENT DOMAIN LAWS; AMENDING SECTIONS ~~70-30-101, 70-30-102,~~8 ~~70-30-110, 70-30-111, 70-30-201, 70-30-203,~~9 ~~70-30-205, 70-30-207, 70-30-301, 70-30-302, 70-30-304,~~10 ~~70-30-308, 70-30-310, 70-30-313, 70-30-314, 70-30-315,~~11 ~~70-30-316, 70-30-317, 70-30-318, 70-30-319, 70-30-320, 70-30-321,~~12 ~~70-30-322, 70-30-323, 70-30-324, 70-30-325, 70-30-326, 70-30-327,~~13 ~~70-30-328, 70-30-329, 70-30-330, 70-30-331, 70-30-332, 70-30-333,~~14 ~~70-30-334, 70-30-335, 70-30-336, 70-30-337, 70-30-338, 70-30-339,~~15 ~~70-30-340, 70-30-341, 70-30-342, 70-30-343, 70-30-344, 70-30-345,~~16 ~~70-30-346, 70-30-347, 70-30-348, 70-30-349, 70-30-350, 70-30-351,~~17 ~~70-30-352, 70-30-353, 70-30-354, 70-30-355, 70-30-356, 70-30-357,~~

18 MCA."

19  
20 WHEREAS, Title 70, Chapter 30, MCA, is in need of

21 revision; and

22 WHEREAS, the Legislature finds that the rights, duties,

23 and procedures set out in this act are necessary to

24 implement the provisions of Article II, section 29, of the

25 Montana Constitution

THIRD READING

There are no changes in HB 825, and due to length will not be rerun. Please refer to yellow copy for complete text.

HB 825

March 12, 1983

SENATE STANDING COMMITTEE REPORT  
(Judiciary)

That House Bill No. 825 be amended as follows:

1. Page 3, line 21.  
Following: "or"  
Strike: "license"  
Insert: "other interest"
2. Page 4, line 4.  
Following: "taken,"  
Strike: "it must appear"  
Insert: "the plaintiff must show by a preponderance of the evidence"
3. Page 4, line 11.  
Following: "(4)"  
Strike: remainder of subsection.  
Insert: "that an effort to obtain the interest sought to be condemned was made by submission of a written offer and that such offer was rejected; and"
4. Page 5, line 2.  
Following: "thereon."  
Strike: the remainder of line 2 through line 6.
5. Page 7, line 22.  
Following: "er-judge"  
Strike: "is satisfied"  
Insert: "finds and concludes"
6. Page 8, line 1.  
Strike: line 1 through "appear"  
Insert: "plaintiff has met his burden of proof under 70-30-111"
7. Page 9.  
Following: line 6.  
Insert: "(4) After a complaint as described in 70-30-203 is filed, and prior to the issuance of the preliminary condemnation order, all parties shall proceed as expeditiously as possible, but without prejudicing any party's position with all aspects of the preliminary condemnation proceeding including discovery and trial. The court shall give such proceedings expeditious and priority consideration."
8. Page 13, line 25.  
Following: line 24.  
Strike: "answer"  
Insert: "statement of claim of just compensation"
9. Page 14, line 11.  
Following: line 10.  
Insert: "If the defendant fails to file a statement of claim of just compensation within 10 days as specified in 70-30-207, plaintiff may obtain a possession order provided for in this subsection subject to the condition subsequent that a plaintiff's payment into court shall be made within 10 days of receipt of the defendant's statement of claim."

March 18, 1983

SENATE STANDING COMMITTEE REPORT  
(Judiciary)

That House Bill No. 825 be amended as follows:

1. Page 3, line 21.

Following: "or"

Strike: "license"

Insert: "other interest"

2. Page 4, line 4.

Following: "taken,"

Strike: "it must appear"

Insert: "the plaintiff must show by a preponderance of the evidence that the public interest requires the taking based on the following findings"

3. Page 4, lines 11 and 12.

Following: "(4)"

Strike: the remainder of line 11 and line 12 in its entirety

Insert: "that an effort to obtain the interest sought to be condemned was made by submission of a written offer and that such offer was rejected."

4. Page 4, line 13.

Strike: line 13 in its entirety

5. Page 5, lines 2 through 6.

Following: "thereon."

Strike: remainder of line 2 through "complaint" on line 6.

Insert: "A summons served under this chapter must contain a notice to the defendant to file and serve an answer. Within six months from the date the summons is served, unless the court shortens or enlarges that time for good cause, the court shall commence its trial on the issue of whether a preliminary condemnation order should be issued"

6. Page 7, line 22.

Following: "er-judge"

Strike: "is satisfied"

Insert: "finds and concludes"

7. Page 8, line 1.

Strike: line 1 through "appear"

Insert: "plaintiff has met his burden of proof under 70-30-111"

8. Page 9, line 6.

Strike: ""

Insert: "(4) After a complaint as described in 70-30-203 is filed and prior to the issuance of the preliminary condemnation order, all parties shall proceed as expeditiously as possible, but without prejudicing any party's position, with all aspects of the preliminary condemnation proceeding including discovery and trial. The court shall give such proceedings expeditious and priority consideration."

Standing Committee Report H.B. 825  
Senate Judiciary Committee  
March 18, 1983  
Page -2-

9. Page 13, line 25.

Strike: "answer"

Insert: "statement of claim of just compensation"

10. Page 14, line 11.

Following: line 10

Insert: "(2) If the defendant fails to file a statement of claim of just compensation within the time specified in 70-30-207, the plaintiff may obtain an order for possession provided for in subsection (1), subject to the condition subsequent that a plaintiff's payment into court shall be made within 10 days of receipt of the defendant's statement of claim."

Renumber: subsequent subsections

## HOUSE BILL NO. 825

INTRODUCED BY JACOBSEN, BERTELSEN, BARDANOUVE, KEMMIS,

OCHSNER, DONALDSON, REAM, SOLBERG, BACHINI,

ASAY, SHONTZ, SCHYE, THOFT

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE

EMINENT DOMAIN LAWS; AMENDING SECTIONS 70-30-101, 70-30-102,

70-30-104, 70-30-111, 70-30-201, 70-30-203,

70-30-205, 70-30-207, 70-30-301, 70-30-302, 70-30-304,

70-30-308 THROUGH 70-30-318, AND 70-30-313, MCA; REPEALING

SECTIONS 69-13-104, 70-30-104, 70-30-204, 70-30-206,

70-30-305, 70-30-311, 70-30-321, 70-30-322, 82-2-201, 82-2-202,

82-2-212, 82-2-221, 82-2-224, AND 82-10-301 THROUGH

82-10-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE

70-30-104, 70-30-111, 70-30-201, 70-30-203,

70-30-206, 70-30-207, 70-30-308, 70-30-309, 70-30-311, AND

70-30-313, MCA; REPEALING SECTIONS 70-30-204 AND 70-30-205,

MCA."

WHEREAS, Title 70, Chapter 30, MCA, is in need of  
revision; and

WHEREAS, the legislature finds that the rights, duties,  
and procedures set out in this act are necessary to  
implement the provisions of Article II, section 29, of the  
Montana Constitution;

THEREFORE, it is the intent of the legislature that the  
use of the power of eminent domain be limited to the state,  
its political subdivisions, and certain other entities that  
the power of eminent domain be used for purposes that  
directly benefit and are available to the public that  
persons whose property is taken be accorded the same rights  
and obligations as other civil litigants that condemners  
may acquire only the minimum property rights necessary for  
the public use involved and must pay to the condemnee the  
value of the property as determined by its highest and best  
use and that condemners have no right to enter the property  
sought to be condemned until a court determines that the  
exercise of the right of eminent domain is proper and in  
accordance with the requirements of Title 70, Chapter 30,  
MCA as amended by this act.

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

Refer to Introduced Bill

(Strike everything after the enacting clause and insert:)

Section 1. Section 70-30-104, MCA, is amended to read:

"70-30-104. What estates and rights in land may be  
taken. The following is a classification of the estates and  
rights in lands subject to be taken for the public use:

(1) such estate or rights as may be necessary up to  
and including a fee simple when taken for public buildings

1 or grounds or for permanent buildings or for an outlet for a  
 2 flow or a place for the deposit of debris or tailings of a  
 3 mine or for the mining and extracting of ores, metals, or  
 4 minerals when the same are owned by the plaintiff but  
 5 located beneath or upon the surface of property where the  
 6 title to said surface vests in others or for the underground  
 7 storage of natural gas by a natural gas public utility as  
 8 defined in 82-10-301. When the appropriation is for the  
 9 underground storage of natural gas, all of the right, title,  
 10 interest, and estate in the real property and in the subsand  
 11 stratum, formation, or reservoir so appropriated shall be  
 12 determinable and for all purposes terminate upon abandonment  
 13 or upon cessation for the period of 1 year of the use for  
 14 which the same was appropriated, and thereupon the ownership  
 15 of the residue of natural gas therein remaining shall  
 16 likewise vest in the then owners of such reservoir space.

17 (2) such estate or rights in the surface as are  
 18 necessary for a reservoir or dam and for the permanent  
 19 flooding that results, up to the edge of the maximum pool of  
 20 the reservoir;

21 (3) an easement, ~~leasehold, or license~~ OTHER INTEREST,  
 22 for so long as the interest is necessary for the purpose  
 23 described in the complaint, or fee simple when taken for any  
 24 other use;

25 (4) the right of entry upon and occupation of land and

1 the right to take therefrom such earth, gravel, stones,  
 2 trees, and timber as may be necessary for some public use."

3 Section 2. Section 70-30-111, MCA, is amended to read:

4 "70-30-111. Facts necessary to be found before  
 5 condemnation. Before property can be taken, it must appear  
 6 THE PLAINTIFF MUST SHOW BY A PREPONDERANCE OF THE EVIDENCE  
 7 THAT THE PUBLIC INTEREST REQUIRES THE TAKING BASED ON THE  
 8 FOLLOWING FINDINGS:

9 (1) that the use to which it is to be applied is a use  
 10 authorized by law;

11 (2) that the taking is necessary to such use;

12 (3) if already appropriated to some public use, that  
 13 the public use to which it is to be applied is a more  
 14 necessary public use;

15 ~~(4) that a reasonable effort to purchase the property~~  
 16 ~~was sought and a written offer was made and rejected and~~  
 17 THAT AN EFFORT TO OBTAIN THE INTEREST SOUGHT TO BE CONDEMNED  
 18 WAS MADE BY SUBMISSION OF A WRITTEN OFFER AND THAT SUCH  
 19 OFFER WAS REJECTED.

20 ~~(5) that the public interest requires the taking."~~

21 Section 3. Section 70-30-201, MCA, is amended to read:

22 "70-30-201. Applicable rules of practice. Except as  
 23 otherwise provided in this chapter, the provisions of Title  
 24 Titles 25 and 26, including the Montana Rules of Civil  
 25 Procedure and the Montana Rules of Evidence, are applicable

1 to and constitute the rules of practice in the proceedings  
2 mentioned in this chapter."

3 Section 4. Section 70-30-202, MCA, is amended to read:

4 "70-30-202. Jurisdiction and venue -- complaint and  
5 summons required. All proceedings under this chapter must be  
6 brought in the district court of the county in which the  
7 property or some part thereof is situated. They must be  
8 commenced by filing a complaint and issuing a summons  
9 thereon. ~~A summons served under this chapter must contain a~~  
10 ~~notice to the defendant to file and serve an answer to the~~  
11 ~~issue of public necessity and to appear and show cause at a~~  
12 ~~time and place specified therein why the property described~~  
13 ~~should not be condemned as prayed for in the complaint. A~~  
14 SUMMONS SERVED UNDER THIS CHAPTER MUST CONTAIN A NOTICE TO  
15 THE DEFENDANT TO FILE AND SERVE AN ANSWER, WITHIN 6 MONTHS  
16 FROM THE DATE THE SUMMONS IS SERVED, UNLESS THE COURT  
17 SHORTENS OR ENLARGES THAT TIME FOR GOOD CAUSE. THE COURT  
18 SHALL COMMENCE ITS TRIAL ON THE ISSUE OF WHETHER A  
19 PRELIMINARY CONDEMNATION ORDER SHOULD BE ISSUED."

20 Section 5. Section 70-30-203, MCA, is amended to read:

21 "70-30-203. Contents of complaint. The complaint must  
22 contain allege:

23 (1) the name of the corporation, association,  
24 commission, or person in charge of the public use for which  
25 the property is sought, who must be styled plaintiff;

1 (2) the names of all owners, mortgagees, and  
2 lienholders of record and any other claimants of the  
3 property of record, if known, or a statement that they are  
4 unknown, who must be styled defendants;

5 (3) a statement of the right of plaintiff;

6 ~~(4) statements of each of the facts necessary to be~~  
7 ~~found in 70-30-111;~~

8 ~~(4)(5)~~ if a right-of-way is sought, the complaint must  
9 show the location, general route, and termini and must be  
10 accompanied with a map thereof, so far as the same is  
11 involved in the action or proceeding;

12 ~~(5)(6)~~ a description of each ~~piece of land~~ interest in  
13 real property sought to be taken and whether the same  
14 includes the whole or only a part of the entire parcel or  
15 tract. All parcels lying in the county and required for the  
16 same public use may be included in the same or separate  
17 proceedings, at the option of the plaintiff, but the court  
18 may consolidate or separate them to suit the convenience of  
19 the parties. ~~When application for the condemnation of a~~  
20 ~~right-of-way for the purposes of sewerage is made on behalf~~  
21 ~~of a settlement or a town or a county, the county~~  
22 ~~commissioners of the county may be named as plaintiff.~~

23 ~~(6)(7)~~ if a sand, stratum, or formation suitable for  
24 use as an underground natural gas storage reservoir is  
25 sought to be appropriated, a description thereof and of the

land in which it is alleged to be contained and a description of all other property and rights sought to be appropriated for use in connection with the appropriation of the right to store natural gas in and withdraw natural gas from such reservoir. In addition, the complaint shall state facts showing that the underground reservoir is one subject to appropriation by plaintiff; also stating that the underground storage of natural gas in the land sought to be appropriated is in the public interest; that the underground reservoir is suitable and practicable for natural gas storage; that the plaintiff in good faith has been unable to acquire the rights sought to be appropriated hereunder and a statement that the rights and property sought to be appropriated are not prohibited by law; and in addition, the complaint must be accompanied by a certificate from the board of oil and gas conservation as set forth in 82-10-304."

Section 6. Section 70-30-206, MCA, is amended to read:

"70-30-206. Powers of court -- preliminary condemnation order. (1) The court or judge has power to:

(a) regulate and determine the place and manner of making the connections and crossings and enjoying the common uses mentioned in 70-30-103(1)(e) and of the occupying of canyons, passes, and defiles for railroad purposes, as permitted and regulated by the laws of this state or of the

United States; or

(b) determine whether or not the use for which the property is sought to be appropriated is a public use within the meaning of the laws of this state; limit the interest in real property sought to be appropriated if in the opinion of the court the interest sought is not necessary.

(c) limit the amount of property sought to be appropriated if in the opinion of the court or judge the quantity sought to be appropriated is not necessary.

(2) If the court or judge is satisfied FINDS AND CONCLUDES from the evidence presented at the hearing provided for in 70-30-204 that the public interests require interest requires the taking of such lands interest in real property and that the facts necessary to be found before condemnation appear PLAINTIFF HAS MET HIS BURDEN OF PROOF UNDER 70-30-111, it or he must forthwith make and enter a preliminary condemnation order that the condemnation of the land or other interest in real property may proceed in accordance with the provisions of this chapter.

(3) If the property sought to be appropriated is a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir and the existence and suitability of it for such use has been proved by plaintiff upon substantial evidence, the order of the court or judge shall direct the commissioners to ascertain and



1 determine the amount to be paid by the plaintiff to each  
 2 person for his interest in the property sought to be  
 3 appropriated for use as such underground natural gas storage  
 4 reservoir and/or as the annual rental for the use of such  
 5 underground gas storage reservoir and for the use of so much  
 6 of the surface as is required in the operation of the  
 7 underground gas storage reservoir and for the use in  
 8 connection with the creation, operation, and maintenance  
 9 thereof and for all the native gas contained in said  
 10 reservoir as compensation and damages by reason of the  
 11 appropriation of such property. However, the amount to be  
 12 paid for such native gas and all thereof shall be no less  
 13 than the market value of such gas. The court shall appoint  
 14 three persons, qualified as experts and recommended as such  
 15 by the board of oil and gas conservation, to assist and  
 16 advise the commissioners in determining the compensation and  
 17 damages to be paid by plaintiff to each person for his  
 18 interest in the property sought to be appropriated, and the  
 19 fees and expenses of such persons shall be chargeable as  
 20 costs of the proceedings to be paid by the plaintiff.

21 (4) AFTER A COMPLAINT AS DESCRIBED IN 70-30-203 IS  
 22 FILED AND PRIOR TO THE ISSUANCE OF THE PRELIMINARY  
 23 CONDEMNATION ORDER, ALL PARTIES SHALL PROCEED AS  
 24 EXPEDITIOUSLY AS POSSIBLE, BUT WITHOUT PREJUDICING ANY  
 25 PARTY'S POSITION, WITH ALL ASPECTS OF THE PRELIMINARY

1 CONDEMNATION PROCEEDING INCLUDING DISCOVERY AND TRIAL. THE  
 2 COURT SHALL GIVE SUCH PROCEEDINGS EXPEDITIOUS AND PRIORITY  
 3 CONSIDERATION."

4 Section 7. Section 70-30-207, MCA, is amended to read:  
 5 "70-30-207. Appointment of commissioners --  
 6 qualifications -- affidavit. (1) ~~Immediately upon making and~~  
 7 ~~entering the preliminary condemnation order, the judge must~~  
 8 ~~meet with the respective parties or their attorneys of~~  
 9 ~~record for the purpose of appointing condemnation~~  
 10 ~~commissioners to ascertain and determine the amount to be~~  
 11 ~~paid by the plaintiff to each owner or other persons~~  
 12 ~~interested in such property by reason of the appropriation~~  
 13 ~~of such property. The appointment of~~ Within 10 days of  
 14 entry of a preliminary condemnation order, the defendant  
 15 shall file a statement of his claim of just compensation. If  
 16 within 20 days of service of defendant's claim plaintiff  
 17 fails to accept the claim, the court must appoint  
 18 condemnation commissioners and the commission hearing may be  
 19 waived by written consent of both parties, in which case the  
 20 proceeding shall be conducted in the district court as if  
 21 the case had been appealed from an award by such  
 22 commissioners.

23 (2) The court must thereupon appoint three qualified,  
 24 disinterested condemnation commissioners, unless appointment  
 25 has been waived. One of such commissioners shall be

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

8 (3) Each commissioner shall possess the following  
 9 qualifications:

10 (a) a citizen of the United States and over 18 years  
 11 of age;

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

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

15 (d) that he is possessed of sufficient knowledge of  
 16 the English language;

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

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

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

24 (h) that he does not stand in the relation of guardian  
 25 and ward, master and servant, debtor and creditor, or

1 principal and agent or partner or surety as to any party.

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

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

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

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

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

24 Section 8. Section 70-30-308, MCA, is amended to read:

25 "70-30-308. How payment made -- execution or annulment

for nonpayment. (1) Payment may be made to the defendants entitled thereto, or the money may be deposited in court for the defendants and be distributed to those entitled thereto. However, at the option of the defendants, payments may be made:

(a) ~~if a fee simple interest in the defendants' land is taken~~ on an annual basis, utilizing the installment contract method; or

(b) if other land is reasonably available and the plaintiff consents, by means of a land exchange between the defendants and plaintiffs if the land to be provided by the plaintiffs in the exchange is of equal or more value than the land being condemned; or

~~(c) if an easement over or through the defendants' property is involved in either a single payment or in not more than five consecutive annual installments.~~

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

Section 9. Section 70-30-309, MCA, is amended to read:

"70-30-309. Final order of condemnation -- contents --

vesting upon filing. (1) When payments have been made and the bond given, if the plaintiff elects to give one, as required by 70-30-307 and 70-30-308, the court or judge must make a final order of condemnation, which must describe the property condemned and the purposes of such condemnation.

(2) A copy of the order must be filed in the office of the county clerk and recorder, and thereupon the property described therein shall vest in the plaintiff for the purposes therein specified."

Section 10. Section 70-30-311, MCA, is amended to read:

"70-30-311. Putting plaintiff in possession. (1) At any time after the filing of the preliminary condemnation order or after the report and assessment of the commissioners have been made and filed in the court and either before or after appeal from such assessment or from any other order or judgment in the proceedings, the court or any judge thereof at chambers upon application of the plaintiff shall have power to make an order that, upon payment into court for the defendant entitled thereto of the amount of compensation claimed by the defendant in his answer STATEMENT OF CLAIM OF JUST COMPENSATION under 70-30-207 or the amount assessed either by the commissioners or by the jury, as the case may be, the plaintiff be authorized:

(a) if already in possession of the property of such defendant sought to be appropriated, to continue in such possession; or

(b) if not in possession, to take possession of such property and use and possess the same during the pendency and until the final conclusion of the proceedings and litigation and that all actions and proceedings against the plaintiff on account thereof be stayed until such time.

~~(2) IF THE DEFENDANT FAILS TO FILE A STATEMENT OF CLAIM OF JUST COMPENSATION WITHIN THE TIME SPECIFIED IN 10-30-201, THE PLAINTIFF MAY OBTAIN AN ORDER FOR POSSESSION PROVIDED FOR IN SUBSECTION (1), SUBJECT TO THE CONDITION SUBSEQUENT THAT A PLAINTIFF'S PAYMENT INTO COURT SHALL BE MADE WITHIN 10 DAYS OF RECEIPT OF THE DEFENDANT'S STATEMENT OF CLAIM.~~

~~(2)(3) However, where an appeal is taken by such defendant, the court or judge may, in its or his discretion, require the plaintiff before continuing or taking such possession, in addition to paying into court the amount assessed, to give bond or undertaking with sufficient sureties to be approved by the judge court and to be in such sum as the court or judge may direct, conditioned to pay the defendant any additional damages and costs over and above the amount assessed, which it may finally be determined that defendant is entitled to for the appropriation of the~~

property, and all damages which defendant may sustain if for any cause such property shall not be finally taken for public uses.

~~(3)(4) The amount assessed by the commissioners or by the jury on appeal, as the case may be, shall be taken and considered, for the purposes of this section, until reassessed or changed in the further proceedings, as just compensation for the property appropriated; but the plaintiff, by payment into court of the amount claimed in the answer or the amount assessed or by giving security as above provided, shall not be thereby prevented or precluded from appealing from such assessment but may appeal in the same manner and with the same effect as if no money had been deposited or security given. In all cases where the plaintiff deposits the amount of the assessment and continues in possession or takes possession of the property, as herein provided, the defendant entitled thereto, if there be no dispute as to the ownership of the property, may at any time demand and receive upon order of the court all or any part of the money so deposited and shall not by such demand or receipt be barred or precluded from his right of appeal from such assessment but may, notwithstanding, take and prosecute his appeal from such assessment; provided that if the amount of such assessment is finally reduced on appeal by either party, such defendant who has received all~~

1 or any part of the amount deposited shall be liable to the  
 2 plaintiff for any excess of the amount so received by him  
 3 over the amount finally assessed, with legal interest on  
 4 such excess from the time such defendant received the money  
 5 deposited, and the same may be recovered by action; and  
 6 provided, further, that upon any appeal from assessment by  
 7 the commissioners to a jury, the jury may find a less as  
 8 well as an equal or greater amount than that assessed by the  
 9 commissioners; and provided, further, that the court shall  
 10 not order the delivery to any defendant of more than 75% of  
 11 the money deposited on his account except upon posting of  
 12 bond by such defendant equal to the amount in excess of 75%,  
 13 with sureties to be approved by the court, to repay to the  
 14 plaintiff such amounts withdrawn as are in excess of his  
 15 final award in the proceedings."

16 Section 11. Section 70-30-313, MCA, is amended to  
 17 read:

18 "70-30-313. Current fair market value. Current fair  
 19 market value is the price that would be agreed to by a  
 20 willing and informed seller and buyer, taking into  
 21 consideration, but not limited to, the following factors:

22 (1) the highest and best reasonably available use of  
 23 ~~the--property and its value for such use, provided current~~  
 24 ~~use may not be presumed to be the highest and best use;~~

25 (2) the machinery, equipment, and fixtures forming

1 part of the real estate taken; and

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

4 ~~NEW\_SECTION.~~ Section 12. Repealer. Sections 70-30-204  
 5 and 70-30-205, MCA, are repealed.

6 ~~NEW\_SECTION.~~ Section 13. Saving clause. This act does  
 7 not affect rights and duties that matured, penalties that  
 8 were incurred, or proceedings that were begun prior to the  
 9 effective date of this act.

-End-

April 8, 1983

FREE CONFERENCE COMMITTEE..... 19.....  
ON HOUSE BILL 825  
(Report No. 1, 8:00 A.M.)

Mr. Speaker:

We, your Free Conference Committee on House Bill 825,  
met and considered:

Senate Judiciary Committee amendments of March 18, 1983.

We recommend as follows:

That the House accede to Senate Judiciary Committee  
amendments of March 18;  
That House Bill 825 be further amended as specified in  
Clerical Instructions 1 and 2; and  
That this Free Conference Committee report be adopted.

CLERICAL INSTRUCTIONS FOR REFERENCE COPY (SALMON)

1) Page 5, line 17

Following: "COURT"

Insert: ", sitting without a jury,"

2) Page 10, line 3

Following: "CONSIDERATION."

Insert: "The preliminary condemnation proceeding shall be  
tried by the court sitting without a jury."

FOR THE HOUSE

SCHYE, CHAIR

ADDY

RAMIREZ

FOR THE SENATE

TURNAGE, CHAIR

CRIPPEN

MAZUREK

Chairman.

## HOUSE BILL NO. 825

INTRODUCED BY JACOBSEN, BERTELSEN, BARDANOUVE, KEMMIS,  
OCHSNER, DONALDSON, REAM, SOLBERG, BACHINI,  
ASAY, SHONTIZ, SCHYE, THOFT

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE EMINENT DOMAIN LAWS; AMENDING SECTIONS 70-30-101, 70-30-102, 70-30-110, 70-30-111, 70-30-201, THROUGH 70-30-203, 70-30-205, 70-30-207, 70-30-301, 70-30-302, 70-30-304, 70-30-308, THROUGH 70-30-310, AND 70-30-313; MCA; REPEALING SECTIONS 69-13-104, 70-30-104, 70-30-204, 70-30-206, 70-30-305, 70-30-311, 70-30-321, 70-30-322, 82-2-201, 82-2-212, 82-2-221, 82-2-224, AND 82-10-301, THROUGH 82-10-305; MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 70-30-104, 70-30-111, 70-30-201, THROUGH 70-30-203, 70-30-206, 70-30-207, 70-30-308, 70-30-309, 70-30-311, AND 70-30-313, MCA; REPEALING SECTIONS 70-30-204 AND 70-30-205, MCA."

WHEREAS Title 70, chapter 38, MEA is in need of  
revisions and

WHEREAS, the legislature finds that the rights, duties, and procedures set out in this act are necessary to implement the provisions of Article II, section 29, of the Montana Constitution;

THEREFORE, it is the intent of the Legislature that the  
 use of the power of eminent domain be limited to the state,  
 its political subdivisions, and certain other entities, that  
 the power of eminent domain be used for purposes that  
 directly benefit and are available to the public; that  
 persons whose property is taken be accorded the same rights  
 and obligations as other civil litigants; that condemnors  
 may acquire only the minimum property rights necessary for  
 the public use involved and must pay to the condemnee the  
 value of the property as determined by its highest and best  
 use; and that condemnors have no right to enter the property  
 sought to be condemned until a court determines that the  
 exercise of the right of eminent domain is proper and in  
 accordance with the requirements of Title 70, chapter 30,  
 MCA, as amended by this act.

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

Refer to Introduced Bill

(Strike everything after the enacting clause and insert:)

**Section 1. Section 70-30-104, MCA, is amended to read:**

"70-30-104. What estates and rights in land may be taken. The following is a classification of the estates and rights in lands subject to be taken for the public use:

(1) such estate or rights as may be necessary up to and including a fee simple when taken for public buildings

1 or grounds or for permanent buildings or for an outlet for a  
 2 flow or a place for the deposit of debris or tailings of a  
 3 mine or for the mining and extracting of ores, metals, or  
 4 minerals when the same are owned by the plaintiff but  
 5 located beneath or upon the surface of property where the  
 6 title to said surface vests in others or for the underground  
 7 storage of natural gas by a natural gas public utility as  
 8 defined in 82-10-301. When the appropriation is for the  
 9 underground storage of natural gas, all of the right, title,  
 10 interest, and estate in the real property and in the subsand  
 11 stratum, formation, or reservoir so appropriated shall be  
 12 determinable and for all purposes terminate upon abandonment  
 13 or upon cessation for the period of 1 year of the use for  
 14 which the same was appropriated, and thereupon the ownership  
 15 of the residue of natural gas therein remaining shall  
 16 likewise vest in the then owners of such reservoir space.

17 (2) such estate or rights in the surface as are  
 18 necessary for a reservoir or dam and for the permanent  
 19 flooding that results, up to the edge of the maximum pool of  
 20 the reservoir;

21 (3) an easement, ~~leasehold, or license~~ OTHER INTEREST,  
 22 for so long as the interest is necessary for the purpose  
 23 described in the complaint, or fee simple when taken for any  
 24 other use;

25 (4) the right of entry upon and occupation of land and

1 the right to take therefrom such earth, gravel, stones,  
 2 trees, and timber as may be necessary for some public use."

3 Section 2. Section 70-30-111, MCA, is amended to read:

4 "70-30-111. Facts necessary to be found before  
 5 condemnation. Before property can be taken, it ~~must appear~~  
 6 THE PLAINTIFF MUST SHOW BY A PREPONDERANCE OF THE EVIDENCE  
 7 THAT THE PUBLIC INTEREST REQUIRES THE TAKING BASED ON THE  
 8 FOLLOWING FINDINGS:

9 (1) that the use to which it is to be applied is a use  
 10 authorized by law;

11 (2) that the taking is necessary to such use;

12 (3) if already appropriated to some public use, that  
 13 the public use to which it is to be applied is a more  
 14 necessary public use;

15 ~~(4) that a reasonable effort to purchase the property~~  
 16 ~~was sought and a written offer was made and rejected and~~  
 17 ~~THAT AN EFFORT TO OBTAIN THE INTEREST SOUGHT TO BE CONDEMNED~~  
 18 ~~WAS MADE BY SUBMISSION OF A WRITTEN OFFER AND THAT SUCH~~  
 19 ~~OFFER WAS REJECTED.~~

20 ~~(5) that the public interest requires the taking.~~

21 Section 3. Section 70-30-201, MCA, is amended to read:

22 "70-30-201. Applicable rules of practice. Except as  
 23 otherwise provided in this chapter, the provisions of Title  
 24 Titles 25 and 26, including the Montana Rules of Civil  
 25 Procedure and the Montana Rules of Evidence, are applicable



1 to and constitute the rules of practice in the proceedings  
2 mentioned in this chapter."

3 Section 4. Section 70-30-202, MCA, is amended to read:

4 "70-30-202. Jurisdiction and venue -- complaint and  
5 summons required. All proceedings under this chapter must be  
6 brought in the district court of the county in which the  
7 property or some part thereof is situated. They must be  
8 commenced by filing a complaint and issuing a summons  
9 thereon. ~~A summons served under this chapter must contain a~~  
10 ~~notice to the defendant to file and serve an answer to the~~  
11 ~~issue of public necessity and to appear and show cause at a~~  
12 ~~time and place specified therein why the property described~~  
13 ~~should not be condemned or a prayer for in the complaint A~~  
14 SUMMONS SERVED UNDER THIS CHAPTER MUST CONTAIN A NOTICE TO  
15 THE DEFENDANT TO FILE AND SERVE AN ANSWER, WITHIN 6 MONTHS  
16 FROM THE DATE THE SUMMONS IS SERVED, UNLESS THE COURT  
17 SHORTENS OR ENLARGES THAT TIME FOR GOOD CAUSE, THE COURT,  
18 SITTING WITHOUT A JURY, SHALL COMMENCE ITS TRIAL ON THE  
19 ISSUE OF WHETHER A PRELIMINARY CONDEMNATION ORDER SHOULD BE  
20 ISSUED."

21 Section 5. Section 70-30-203, MCA, is amended to read:

22 "70-30-203. Contents of complaint. The complaint must  
23 contain allege:

24 (1) the name of the corporation, association,  
25 commission, or person in charge of the public use for which

1 the property is sought, who must be styled plaintiff;

2 (2) the names of all owners, mortgagees, and  
3 lienholders of record and any other claimants of the  
4 property of record, if known, or a statement that they are  
5 unknown, who must be styled defendants;

6 (3) a statement of the right of plaintiff;

7 ~~(4) statements of each of the facts necessary to be~~  
8 ~~found in 70-30-111;~~

9 ~~(5) if a right-of-way is sought, the complaint must~~  
10 ~~show the location, general route, and termini and must be~~  
11 ~~accompanied with a map thereof, so far as the same is~~  
12 ~~involved in the action or proceeding;~~

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

24 ~~(7) if a sand, stratum, or formation suitable for~~  
25 ~~use as an underground natural gas storage reservoir is~~

1 sought to be appropriated, a description thereof and of the  
 2 land in which it is alleged to be contained and a  
 3 description of all other property and rights sought to be  
 4 appropriated for use in connection with the appropriation of  
 5 the right to store natural gas in and withdraw natural gas  
 6 from such reservoir. In addition, the complaint shall state  
 7 facts showing that the underground reservoir is one subject  
 8 to appropriation by plaintiff; also stating that the  
 9 underground storage of natural gas in the land sought to be  
 10 appropriated is in the public interest; that the underground  
 11 reservoir is suitable and practicable for natural gas  
 12 storage; that the plaintiff in good faith has been unable to  
 13 acquire the rights sought to be appropriated hereunder and a  
 14 statement that the rights and property sought to be  
 15 appropriated are not prohibited by law; and in addition, the  
 16 complaint must be accompanied by a certificate from the  
 17 board of oil and gas conservation as set forth in  
 18 82-10-304."

19 Section 6. Section 70-30-206, MCA, is amended to read:  
 20 "70-30-206. Powers of court -- preliminary  
 21 condemnation order. (1) The court or judge has power to:

22 (a) regulate and determine the place and manner of  
 23 making the connections and crossings and enjoying the common  
 24 uses mentioned in 70-30-103(1)(e) and of the occupying of  
 25 canyons, passes, and defiles for railroad purposes, as

1 permitted and regulated by the laws of this state or of the  
 2 United States; or

3 (b) ~~determine--whether--or--not--the--use--for--which--the~~  
 4 ~~property--is--sought--to--be--appropriated--is--a--public--use--within~~  
 5 ~~the--meaning--of--the--laws--of--this--state; limit the interest in~~  
 6 ~~real property sought to be appropriated if in the opinion of~~  
 7 ~~the court the interest sought is not necessary.~~

8 ~~(c)--limit--the--amount--of--property--sought--to--be~~  
 9 ~~appropriated--if--in--the--opinion--of--the--court--or--judge--the~~  
 10 ~~quantity--sought--to--be--appropriated--is--not--necessary.~~

11 (2) If the court or judge is satisfied FINDS AND  
 12 CONCLUDES from the evidence presented at the hearing  
 13 provided for in 70-30-204 that the public interests require  
 14 interest requires the taking of such lands interest in real  
 15 property and that the facts necessary to be found before  
 16 condemnation appear PLAINTIFF HAS MET HIS BURDEN OF PROOF  
 17 UNDER 70-30-111, it or he must forthwith make and enter a  
 18 preliminary condemnation order that the condemnation of the  
 19 land or other interest in real property may proceed in  
 20 accordance with the provisions of this chapter.

21 (3) If the property sought to be appropriated is a  
 22 sand, stratum, or formation suitable for use as an  
 23 underground natural gas storage reservoir and the existence  
 24 and suitability of it for such use has been proved by  
 25 plaintiff upon substantial evidence, the order of the court

1 ~~or-judge~~ shall direct the commissioners to ascertain and  
 2 determine the amount to be paid by the plaintiff to each  
 3 person for his interest in the property sought to be  
 4 appropriated for use as such underground natural gas storage  
 5 reservoir and/or as the annual rental for the use of such  
 6 underground gas storage reservoir and for the use of so much  
 7 of the surface as is required in the operation of the  
 8 underground gas storage reservoir and for the use in  
 9 connection with the creation, operation, and maintenance  
 10 thereof and for all the native gas contained in said  
 11 reservoir as compensation and damages by reason of the  
 12 appropriation of such property. However, the amount to be  
 13 paid for such native gas and all thereof shall be no less  
 14 than the market value of such gas. The court shall appoint  
 15 three persons, qualified as experts and recommended as such  
 16 by the board of oil and gas conservation, to assist and  
 17 advise the commissioners in determining the compensation and  
 18 damages to be paid by plaintiff to each person for his  
 19 interest in the property sought to be appropriated, and the  
 20 fees and expenses of such persons shall be chargeable as  
 21 costs of the proceedings to be paid by the plaintiff.

22 (4) AFTER A COMPLAINT AS DESCRIBED IN 70-30-203 IS  
 23 FILED AND PRIOR TO THE ISSUANCE OF THE PRELIMINARY  
 24 CONDEMNATION ORDER, ALL PARTIES SHALL PROCEED AS  
 25 EXPEDITIOUSLY AS POSSIBLE, BUT WITHOUT PREJUDICING ANY

1 PARTY'S POSITION, WITH ALL ASPECTS OF THE PRELIMINARY  
 2 CONDEMNATION PROCEEDING INCLUDING DISCOVERY AND TRIAL. THE  
 3 COURT SHALL GIVE SUCH PROCEEDINGS EXPEDITIOUS AND PRIORITY  
 4 CONSIDERATION. THE PRELIMINARY CONDEMNATION PROCEEDING SHALL  
 5 BE TRIED BY THE COURT SITTING WITHOUT A JURY."

6 Section 7. Section 70-30-207, MCA, is amended to read:  
 7 "70-30-207. Appointment of commissioners --  
 8 qualifications -- affidavit. (1) ~~immediately upon making and~~  
 9 ~~entering the preliminary condemnation order, the judge must~~  
 10 ~~meet with the respective parties or their attorneys of~~  
 11 ~~record for the purpose of appointing condemnation~~  
 12 ~~commissioners to ascertain and determine the amount to be~~  
 13 ~~paid by the plaintiff to each owner or other persons~~  
 14 ~~interested in such property by reason of the appropriation~~  
 15 ~~of such property. The appointment of~~ Within 10 days of  
 16 entry of a preliminary condemnation order, the defendant  
 17 shall file a statement of his claim of just compensation. If  
 18 within 20 days of service of defendant's claim plaintiff  
 19 fails to accept the claim, the court must appoint  
 20 condemnation commissioners and the commission hearing may be  
 21 waived by 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."

Section 8. Section 70-30-308, MCA, is amended to read:

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

(a) ~~if--a--fee-simple-interest-in-the-defendants--land~~ is taken on an annual basis, utilizing the installment contract method; or

(b) if other land is reasonably available and the plaintiff consents, by means of a land exchange between the defendants and plaintiffs if the land to be provided by the plaintiffs in the exchange is of equal or more value than the land being condemned, or

~~(c) if an easement over or through the defendants' property is involved in either a single payment or in not more than five consecutive annual installments.~~

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

Section 9. Section 70-30-309, MCA, is amended to read:

"70-30-309. Final order of condemnation -- contents -- vesting upon filing. (1) When payments have been made and the bond given, if the plaintiff elects to give one, as required by 70-30-307 and 70-30-308, the court or judge must make a final order of condemnation, which must describe the property condemned and the purposes of such condemnation.

(2) A copy of the order must be filed in the office of the county clerk and recorder, and thereupon the property described therein shall vest in the plaintiff for the purposes therein specified."

Section 10. Section 70-30-311, MCA, is amended to read:

"70-30-311. Putting plaintiff in possession. (1) At any time after the filing of the preliminary condemnation order or after the report and assessment of the commissioners have been made and filed in the court and either before or after appeal from such assessment or from any other order or judgment in the proceedings, the court or any judge thereof at chambers upon application of the plaintiff shall have power to make an order that, upon payment into court for the defendant entitled thereto of the amount of compensation claimed by the defendant in his answer STATEMENT OF CLAIM OF JUST COMPENSATION under 70-30-207 or the amount assessed either by the commissioners

1 or by the jury, as the case may be, the plaintiff be  
2 authorized:

3 (a) if already in possession of the property of such  
4 defendant sought to be appropriated, to continue in such  
5 possession; or

6 (b) if not in possession, to take possession of such  
7 property and use and possess the same during the pendency  
8 and until the final conclusion of the proceedings and  
9 litigation and that all actions and proceedings against the  
10 plaintiff on account thereof be stayed until such time.

11 (2) IF THE DEFENDANT FAILS TO FILE A STATEMENT OF  
12 CLAIM OF JUST COMPENSATION WITHIN THE TIME SPECIFIED IN  
13 10-30-207, THE PLAINTIFF MAY OBTAIN AN ORDER FOR POSSESSION  
14 PROVIDED FOR IN SUBSECTION (1), SUBJECT TO THE CONDITION  
15 SUBSEQUENT THAT A PLAINTIFF'S PAYMENT INTO COURT SHALL BE  
16 MADE WITHIN 10 DAYS OF RECEIPT OF THE DEFENDANT'S STATEMENT  
17 OF CLAIM.

18 ~~(2)(3)~~ However, where an appeal is taken by such  
19 defendant, the court or judge may, in its or his discretion,  
20 require the plaintiff before continuing or taking such  
21 possession, in addition to paying into court the amount  
22 assessed, to give bond or undertaking with sufficient  
23 sureties to be approved by the judge court and to be in such  
24 sum as the court or judge may direct, conditioned to pay the  
25 defendant any additional damages and costs over and above

1 the amount assessed, which it may finally be determined that  
2 defendant is entitled to for the appropriation of the  
3 property, and all damages which defendant may sustain if for  
4 any cause such property shall not be finally taken for  
5 public uses.

6 ~~(3)(4)~~ The amount assessed by the commissioners or by  
7 the jury on appeal, as the case may be, shall be taken and  
8 considered, for the purposes of this section, until  
9 reassessed or changed in the further proceedings, as just  
10 compensation for the property appropriated; but the  
11 plaintiff, by payment into court of the amount claimed in  
12 the answer or the amount assessed or by giving security as  
13 above provided, shall not be thereby prevented or precluded  
14 from appealing from such assessment but may appeal in the  
15 same manner and with the same effect as if no money had been  
16 deposited or security given. In all cases where the  
17 plaintiff deposits the amount of the assessment and  
18 continues in possession or takes possession of the property,  
19 as herein provided, the defendant entitled thereto, if there  
20 be no dispute as to the ownership of the property, may at  
21 any time demand and receive upon order of the court all or  
22 any part of the money so deposited and shall not by such  
23 demand or receipt be barred or precluded from his right of  
24 appeal from such assessment but may, notwithstanding, take  
25 and prosecute his appeal from such assessment; provided that

1 if the amount of such assessment is finally reduced on  
 2 appeal by either party, such defendant who has received all  
 3 or any part of the amount deposited shall be liable to the  
 4 plaintiff for any excess of the amount so received by him  
 5 over the amount finally assessed, with legal interest on  
 6 such excess from the time such defendant received the money  
 7 deposited, and the same may be recovered by action; and  
 8 provided, further, that upon any appeal from assessment by  
 9 the commissioners to a jury, the jury may find a less as  
 10 well as an equal or greater amount than that assessed by the  
 11 commissioners; and provided, further, that the court shall  
 12 not order the delivery to any defendant of more than 75% of  
 13 the money deposited on his account except upon posting of  
 14 bond by such defendant equal to the amount in excess of 75%,  
 15 with sureties to be approved by the court, to repay to the  
 16 plaintiff such amounts withdrawn as are in excess of his  
 17 final award in the proceedings."

18 Section 11. Section 70-30-313, MCA, is amended to  
 19 read:

20 "70-30-313. Current fair market value. Current fair  
 21 market value is the price that would be agreed to by a  
 22 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 uses, provided current

1 use may not be presumed to be the highest and best use;

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

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

6 NEW SECTION. Section 12. Repealer. Sections 70-30-204  
 7 and 70-30-205, MCA, are repealed.

8 NEW SECTION. Section 13. Saving clause. This act does  
 9 not affect rights and duties that matured, penalties that  
 10 were incurred, or proceedings that were begun prior to the  
 11 effective date of this act.

-End-