

HOUSE BILL NO. 891

INTRODUCED BY ADDY, DONALDSON, SCHYE, HIRSCH,
HANSON, SPAETH, GRADY, POFF, COBB, HOLLIDAY,
PATTERSON, KRUEGER, KOEHNKE, YELLOWTAIL

IN THE HOUSE

February 19, 1985	Introduced and referred to Committee on Natural Resources.
February 25, 1985	Committee recommend bill do pass as amended. Report adopted. Bill printed and placed on members' desks.
February 26, 1985	Second reading, do pass. Considered correctly engrossed.
February 27, 1985	Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 6, 1985	Introduced and referred to Committee on Judiciary.
March 25, 1985	Committee recommend bill be concurrent in as amended. Report adopted.
March 28, 1985	Second reading, concurred in.
March 30, 1985	Third reading, concurred in. Ayes, 49; Noes, 0. Returned to House with amendments.

IN THE HOUSE

March 30, 1985 Received from Senate.

April 8, 1985 Second reading, amendments concurred in.

On motion, rules suspended and bill placed on third reading this day.

Third reading, amendments concurred in.

Sent to enrolling.

April 11, 1985 Correctly enrolled.

April 12, 1985 Signed by Speaker.

April 15, 1985 Signed by President.

April 17, 1985 Delivered to Governor.

April 18, 1985 Returned from Governor with recommended amendments.

April 19, 1985 Second reading, Governor's amendments concurred in.

April 20, 1985 Third reading, Governor's amendments concurred in.

Governor's amendments transmitted to Senate.

IN THE SENATE

April 22, 1985 Received from House.

Second reading, Governor's amendments concurred in.

April 23, 1985

Third reading, Governor's
amendments concurred in.

Returned to House.

IN THE HOUSE

April 23, 1985

Received from Senate.

Sent to enrolling.

Reported correctly enrolled.

1 HOUSE BILL NO. 891
 2 INTRODUCED BY Ally Donald Sege Henick
 3 M. Hanson Speth Bundy Cobb Halliday
 4 Patterson KRUEGER Falmer Hill Winters
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 6 LAWS PERTAINING TO EMINENT DOMAIN; AMENDING SECTIONS
 7 70-30-110, 70-30-202, 70-30-203, 70-30-207, 70-30-301, AND
 8 70-30-322, MCA."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 10 Section 1. Section 70-30-110, MCA, is amended to read:
 11 "70-30-110. Survey and location of property to be
 12 taken -- greatest public good -- least private injury. In
 13 all cases where land is required for public use, the state
 14 or its agents in charge of such use may survey and locate
 15 the same, but it must be located in the manner which will be
 16 most compatible with the greatest public good and the least
 17 private injury and subject to the provisions of 70-30-206.
 18 The state or its agents in charge of such public use may,
 19 after giving 30 days' written notice to the owners and
 20 persons in possession of the land, enter upon the land and
 21 make examination, surveys, and maps thereof, and such entry
 22 shall constitute no cause of action in favor of the owners
 23 of the land except from injuries resulting from negligence,
 24 wantonness, or malice."
 25 Section 2. Section 70-30-202, MCA, is amended to read:

1 "70-30-202. Jurisdiction and venue -- complaint and
 2 summons required. All proceedings under this chapter must be
 3 brought in the district court of the county judicial
 4 district in which the property or some part thereof is
 5 situated. They must be commenced by filing a complaint and
 6 issuing a summons thereon. A summons served under this
 7 chapter must contain a notice to the defendant to file and
 8 serve an answer. Within 6 months from the date the summons
 9 is served, unless the court shortens or enlarges that time
 10 for good cause, the court, sitting without a jury, shall
 11 commence its trial on the issue of whether a preliminary
 12 condemnation order should be issued."

13 Section 3. Section 70-30-203, MCA, is amended to read:
 14 "70-30-203. Contents of complaint. The complaint must
 15 allege:
 16 (1) the name of the corporation, association,
 17 commission, or person in charge of the public use for which
 18 the property is sought, who must be styled plaintiff;
 19 (2) the names of all owners, purchasers under
 20 contracts for deed, mortgagees, and lienholders of record
 21 and any other claimants of the property of record, if known,
 22 or a statement that they are unknown, who must be styled
 23 defendants;
 24 (3) a statement of the right of plaintiff;
 25 (4) statements of each of the facts necessary to be



-2- INTRODUCED BILL
 HB 891

1 Found in 70-30-111;

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

6 (6) a description of each interest in real property
7 sought to be taken and whether the same includes the whole
8 or only a part of the entire parcel or tract and a statement
9 that the interest sought is the minimum necessary interest.
10 All parcels lying in the county judicial district and
11 required for the same public use may be included in the same
12 or separate proceedings, at the option of the plaintiff, but
13 the court may consolidate or separate them to suit the
14 convenience of the parties.

15 (7) if a sand, stratum, or formation suitable for use
16 as an underground natural gas storage reservoir is sought to
17 be appropriated, a description thereof and of the land in
18 which it is alleged to be contained and a description of all
19 other property and rights sought to be appropriated for use
20 in connection with the appropriation of the right to store
21 natural gas in and withdraw natural gas from such reservoir.
22 In addition, the complaint shall state facts showing that
23 the underground reservoir is one subject to appropriation by
24 plaintiff; also stating that the underground storage of
25 natural gas in the land sought to be appropriated is in the

1 public interest; that the underground reservoir is suitable
2 and practicable for natural gas storage; that the plaintiff
3 in good faith has been unable to acquire the rights sought
4 to be appropriated hereunder and a statement that the rights
5 and property sought to be appropriated are not prohibited by
6 law; and in addition, the complaint must be accompanied by a
7 certificate from the board of oil and gas conservation as
8 set forth in 82-10-304."

9 Section 4. Section 70-30-207, MCA, is amended to read:
10 "70-30-207. Appointment of commissioners -- affidavit
11 -- compensation. (1) Within ~~10~~ 30 days of entry of a
12 preliminary condemnation order, the defendant shall file a
13 statement of his claim of just compensation. If within 20
14 days of service of defendant's claim plaintiff fails to
15 accept the claim, the court must appoint condemnation
16 commissioners and the commission hearing may be waived by
17 written consent of both parties, in which case the
18 proceeding shall be conducted in the district court as if
19 the case had been appealed from an award by such
20 commissioners.

21 (2) The court must thereupon appoint three qualified,
22 disinterested condemnation commissioners, unless appointment
23 has been waived. One of such commissioners shall be
24 nominated by the party or parties plaintiff. One of such
25 commissioners shall be nominated by the party or parties

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

6 (3) Each commissioner shall possess the following
 7 qualifications:

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

10 (b) that he is a resident of a county within the
 11 judicial district in which the action is pending;

12 (c) that he is not related within the sixth degree to
 13 any party; and

14 (d) that he does not stand in the relation of guardian
 15 and ward, master and servant, debtor and creditor, or
 16 principal and agent or partner or surety as to any party.

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

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

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

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

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

14 (5) The court shall specify the compensation of the
 15 condemnation commissioners, which may not exceed \$250 a
 16 hearing day, including expenses. The condemning party shall
 17 pay the compensation of the commissioners nominated."

18 Section 5. Section 70-30-301, MCA, is amended to 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 sought to be appropriated. At a time

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

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

7 (3) The commissioners shall determine:

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

10 (b) the minimum interest to be taken; and

11 (c) whether the condemnor has made a good-faith effort
12 to purchase an interest in the property.

13 ~~(3)~~(4) At the conclusion of the aforesaid hearing, the
14 court or judge shall instruct the commissioners as to the
15 law applicable to their deliberations and shall instruct
16 them that their duty is to determine, solely upon the basis
17 of said examination of lands, the evidence produced at the
18 hearing or hearings, and the instructions of the court, the
19 following:

20 (a) the current fair market value of the property
21 sought to be appropriated and all improvements thereon
22 pertaining to the realty and of each and every separate
23 estate and interest therein. If it consists of different
24 parcels, the current fair market value of each parcel and
25 each estate or interest therein must be separately assessed.

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

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

19 (d) if the property sought to be condemned be for a
20 railroad, the cost of good and sufficient fences along the
21 line of such railroad and the cost of cattle guards where
22 fences may cross the line of such railroad.

23 ~~(4)~~(5) Where there are two or more estates or divided
24 interests in property sought to be condemned, the plaintiff
25 is entitled to have the amount of the award for said

1 property first determined, as hereinbefore stated, as
 2 between plaintiff and all defendants claiming any interests
 3 therein. Thereafter in the same proceeding the respective
 4 rights of each of such defendants in and to the award shall
 5 be determined by the commissioners, under supervision and
 6 instruction of the court, and the award apportioned
 7 accordingly."

8 Section 6. Section 70-30-322, MCA, is amended to read:

9 "70-30-322. Option of original owner or successor in
 10 interest to purchase at sale price. (1) Except as provided
 11 in subsection (3), the owner from whom the real property
 12 interest was originally acquired by eminent domain or
 13 otherwise or, if there is a successor in interest, the
 14 successor in interest shall have the a 30-day option from
 15 the date of a sale provided for in 70-30-321 to purchase the
 16 interest by offering therefor an amount of money equal to
 17 the highest bid received for the interest at ~~a~~ the sale
 18 ~~provided--for--in-70-30-321~~. If more than one person claims
 19 an equal entitlement, the option may not be exercised.

20 (2) If no bids are received by the seller and the
 21 optionholder indicates in writing to the seller that he
 22 wishes to exercise the option, the seller shall have the
 23 real property interest appraised and sell the interest at
 24 that price to the optionholder.

25 (3) When an interest other than a fee simple interest

1 in property, which has been acquired for a public purpose by
 2 right of eminent domain, or otherwise, is abandoned or the
 3 purpose for which it was acquired is terminated, the
 4 property reverts to the original owner or his successor in
 5 interest."

-End-

APPROVED BY COMM. ON
NATURAL RESOURCES

HOUSE BILL NO. 891

INTRODUCED BY ADDY, DONALDSON, SCHYE, HIRSCH,
HANSON, SPAETH, GRADY, POFF, COBB, HOLLIDAY,
PATTERSON, KRUEGER, KOEHNKE, YELLOWTAIL

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
LAWS PERTAINING TO EMINENT DOMAIN; AMENDING SECTIONS
70-30-110, 70-30-202, 70-30-203, 70-30-207, ~~70-30-301~~, AND
70-30-322, MCA."

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

Section 1. Section 70-30-110, MCA, is amended to read:

"70-30-110. Survey and location of property to be
taken -- greatest public good -- least private injury. In
all cases where land is required for public use, the state
or its agents in charge of such use may survey and locate
the same, but it must be located in the manner which will be
most compatible with the greatest public good and the least
private injury and subject to the provisions of 70-30-206.
The state or its agents in charge of such public use may,
after giving 30 days' written notice to the owners and
persons in possession of the land, enter upon the land and
make examination, surveys, and maps thereof, and such entry
shall constitute no cause of action in favor of the owners
of the land except from injuries resulting from negligence,

wantonness, or malice."

Section 2. 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. A summons served under this
chapter must contain a notice to the defendant to file and
serve an answer. Within 6 months from the date the summons
is served, unless the court shortens or enlarges that time
for good cause, the court, sitting without a jury, shall
commence its trial on the issue of whether a preliminary
condemnation order should be issued."

Section 3. Section 70-30-203, MCA, is amended to read:

"70-30-203. Contents of complaint. The complaint must
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, purchasers under
contracts for deed, 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;



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

2 (4) statements of each of the facts necessary to be
3 found in 70-30-111;

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

8 (6) a description of each interest in real property
9 sought to be taken and whether the same includes the whole
10 or only a part of the entire parcel or tract and a statement
11 that the interest sought is the minimum necessary interest.
12 All parcels lying in the county judicial district and
13 required for the same public use may be included in the same
14 or separate proceedings, at the option of the plaintiff, but
15 the court may consolidate or separate them to suit the
16 convenience of the parties.

17 (7) if a sand, stratum, or formation suitable for use
18 as an underground natural gas storage reservoir is sought to
19 be appropriated, a description thereof and of the land in
20 which it is alleged to be contained and a description of all
21 other property and rights sought to be appropriated for use
22 in connection with the appropriation of the right to store
23 natural gas in and withdraw natural gas from such reservoir.
24 In addition, the complaint shall state facts showing that
25 the underground reservoir is one subject to appropriation by

1 plaintiff; also stating that the underground storage of
2 natural gas in the land sought to be appropriated is in the
3 public interest; that the underground reservoir is suitable
4 and practicable for natural gas storage; that the plaintiff
5 in good faith has been unable to acquire the rights sought
6 to be appropriated hereunder and a statement that the rights
7 and property sought to be appropriated are not prohibited by
8 law; and in addition, the complaint must be accompanied by a
9 certificate from the board of oil and gas conservation as
10 set forth in 82-10-304."

11 Section 4. Section 70-30-207, MCA, is amended to read:

12 "70-30-207. Appointment of commissioners -- affidavit
13 -- compensation. (1) Within ~~10~~ 30 days of entry of a
14 preliminary condemnation order, the defendant shall file a
15 statement of his claim of just compensation. If within 20
16 days of service of defendant's claim plaintiff fails to
17 accept the claim, the court must appoint condemnation
18 commissioners and the commission hearing may be waived by
19 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) that he is possessed of sufficient knowledge of
11 the English language;

12 (b) that he is a resident of a county within the
13 judicial district in which the action is pending;

14 (c) that he is not related within the sixth degree to
15 any party; and

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

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

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

1 plaintiff's offer for the lands and improvements of the
2 defendants;

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

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

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

16 (5) The court shall specify the compensation of the
17 condemnation commissioners, which may not exceed \$250 a
18 hearing day, including expenses. The condemning party shall
19 pay the compensation of the commissioners nominated."

20 ~~Section 5--Section 70-30-3017-MCA, is amended to read:~~
21 ~~"70-30-3017--Hearing-----judge---to---preside-----~~
22 ~~determinations--by--commissioners;--(1)--Immediately--upon~~
23 ~~nomination-and-appointment-of-commissioners-under-70-30-207,~~
24 ~~the--same-shall-proceed-to-meet-at-the-time-and-place-stated~~
25 ~~in-the-order-appointing-them,--which-time-shall-not--be--more~~

1 than 10 days after the order of appointing, and proceed to
 2 examine the lands sought to be appropriated. At a time
 3 appointed by the judge and within said 10-day period they
 4 shall hear the allegations and evidence of all persons
 5 interested in each of the several parcels of land.

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

9 (3) The commissioners shall determine:

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

12 (b) the minimum interest to be taken; and

13 (c) whether the condemnor has made a good faith effort
 14 to purchase an interest in the property.

15 (3)(4) At the conclusion of the aforesaid hearing, the
 16 court or judge shall instruct the commissioners as to the
 17 law applicable to their deliberations and shall instruct
 18 them that their duty is to determine, solely upon the basis
 19 of said examination of lands, the evidence produced at the
 20 hearing or hearings, and the instructions of the court, the
 21 following:

22 (a) the current fair market value of the property
 23 sought to be appropriated and all improvements thereon
 24 pertaining to the realty and of each and every separate
 25 estate and interest therein, if it consists of different

1 parcels, the current fair market value of each parcel and
 2 each estate or interest therein must be separately assessed.
 3 (b) if the property sought to be appropriated
 4 constitutes only a part of a larger parcel, the depreciation
 5 in current fair market value which will accrue to the
 6 portion not sought to be condemned by reason of its
 7 severance from the portion sought to be condemned and the
 8 construction of the improvements in the manner proposed by
 9 the plaintiff;

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

21 (d) if the property sought to be condemned be for a
 22 railroad, the cost of good and sufficient fences along the
 23 line of such railroad and the cost of cattle guards where
 24 fences may cross the line of such railroad.

25 (4)(5) Where there are two or more estates or divided

1 interests--in-property-sought-to-be-condemned, the plaintiff
 2 is-entitled-to--have--the--amount--of--the--award--for--said
 3 property---first--determined,--as--hereinbefore--stated,--as
 4 between-plaintiff-and-all-defendants-claiming-any--interests
 5 therein,--Thereafter--in--the--same--proceeding--the--respective
 6 rights-of-each-of-such-defendants-in-and-to-the-award--shall
 7 be--determined--by--the-commissioners,--under-supervision-and
 8 instruction--of--the--court,--and--the--award---apportioned
 9 accordingly."

10 Section 5. Section 70-30-322, MCA, is amended to read:

11 "70-30-322. Option of original owner or successor in
 12 interest to purchase at sale price. (1) Except as provided
 13 in subsection (3), the owner from whom the real property
 14 interest was originally acquired by eminent domain or
 15 otherwise or, if there is a successor in interest, the OWNER
 16 OR HIS successor in interest shall BE NOTIFIED BY THE SELLER
 17 BY CERTIFIED MAIL AND SHALL have the a 30-day option from
 18 the date of a sale provided for in 70-30-321 to purchase the
 19 interest by offering therefor an amount of money equal to
 20 the highest bid received for the interest at a the sale
 21 provided-for-in-70-30-321. If more than one person claims
 22 an equal entitlement, the option may not be exercised.

23 (2) If no bids are received by the seller and the
 24 optionholder indicates in writing to the seller that he
 25 wishes to exercise the option, the seller shall have the

1 real property interest appraised and sell the interest at
 2 that price to the optionholder.

3 (3) When an interest other than a fee simple interest
 4 in property, which has been acquired for a public purpose by
 5 right of eminent domain, or otherwise, is abandoned or the
 6 purpose for which it was acquired is terminated, the
 7 property reverts to the original owner or his successor in
 8 interest."

-End-

HOUSE BILL NO. 891

INTRODUCED BY ADDY, DONALDSON, SCHYE, HIRSCH,
HANSON, SPAETH, GRADY, POFF, COBB, HOLLIDAY,
PATTERSON, KRUEGER, KOEHNKE, YELLOWTAIL

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
LAWS PERTAINING TO EMINENT DOMAIN; AMENDING SECTIONS
70-30-110, 70-30-202, 70-30-203, 70-30-207, ~~70-30-301~~ AND
70-30-322, MCA."

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

Section 1. Section 70-30-110, MCA, is amended to read:

"70-30-110. Survey and location of property to be
taken -- greatest public good -- least private injury. In
all cases where land is required for public use, the state
or its agents in charge of such use may survey and locate
the same, but it must be located in the manner which will be
most compatible with the greatest public good and the least
private injury and subject to the provisions of 70-30-206.
The state or its agents in charge of such public use may,
after giving 30 days' written notice to the owners and
persons in possession of the land, enter upon the land and
make examination, surveys, and maps thereof, and such entry
shall constitute no cause of action in favor of the owners
of the land except from injuries resulting from negligence,

wantonness, or malice."

Section 2. 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. A summons served under this
chapter must contain a notice to the defendant to file and
serve an answer. Within 6 months from the date the summons
is served, unless the court shortens or enlarges that time
for good cause, the court, sitting without a jury, shall
commence its trial on the issue of whether a preliminary
condemnation order should be issued."

Section 3. Section 70-30-203, MCA, is amended to read:

"70-30-203. Contents of complaint. The complaint must
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, purchasers under
contracts for deed, 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;



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

2 (4) statements of each of the facts necessary to be
3 found in 70-30-111;

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

8 (6) a description of each interest in real property
9 sought to be taken and whether the same includes the whole
10 or only a part of the entire parcel or tract and a statement
11 that the interest sought is the minimum necessary interest.

12 All parcels lying in the county judicial district and
13 required for the same public use may be included in the same
14 or separate proceedings, at the option of the plaintiff, but
15 the court may consolidate or separate them to suit the
16 convenience of the parties.

17 (7) if a sand, stratum, or formation suitable for use
18 as an underground natural gas storage reservoir is sought to
19 be appropriated, a description thereof and of the land in
20 which it is alleged to be contained and a description of all
21 other property and rights sought to be appropriated for use
22 in connection with the appropriation of the right to store
23 natural gas in and withdraw natural gas from such reservoir.
24 In addition, the complaint shall state facts showing that
25 the underground reservoir is one subject to appropriation by

1 plaintiff; also stating that the underground storage of
2 natural gas in the land sought to be appropriated is in the
3 public interest; that the underground reservoir is suitable
4 and practicable for natural gas storage; that the plaintiff
5 in good faith has been unable to acquire the rights sought
6 to be appropriated hereunder and a statement that the rights
7 and property sought to be appropriated are not prohibited by
8 law; and in addition, the complaint must be accompanied by a
9 certificate from the board of oil and gas conservation as
10 set forth in 82-10-304."

11 Section 4. Section 70-30-207, MCA, is amended to read:

12 "70-30-207. Appointment of commissioners -- affidavit
13 -- compensation. (1) Within ~~10~~ 30 days of entry of a
14 preliminary condemnation order, the defendant shall file a
15 statement of his claim of just compensation. If within 20
16 days of service of defendant's claim plaintiff fails to
17 accept the claim, the court must appoint condemnation
18 commissioners and the commission hearing may be waived by
19 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) that he is possessed of sufficient knowledge of
11 the English language;

12 (b) that he is a resident of a county within the
13 judicial district in which the action is pending;

14 (c) that he is not related within the sixth degree to
15 any party; and

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

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

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

1 plaintiff's offer for the lands and improvements of the
2 defendants;

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

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

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

16 (5) The court shall specify the compensation of the
17 condemnation commissioners, which may not exceed \$250 a
18 hearing day, including expenses. The condemning party shall
19 pay the compensation of the commissioners nominated."

20 ~~Section 57--Section 70-30-3017-MEA, is amended to read:~~
21 ~~"70-30-3017--Hearing-----judge---to---preside-----~~
22 ~~determinations--by--commissioners;---(1)---Immediately---upon~~
23 ~~nomination-and-appointment-of-commissioners-under-70-30-2077,~~
24 ~~the--same-shall-proceed-to-meet-at-the-time-and-place-stated~~
25 ~~in-the-order-appointing-them, which-time-shall-not--be--more~~

1 than 10 days after the order of appointing, and proceed to
2 examine the lands sought to be appropriated. At a time
3 appointed by the judge and within said 10-day period they
4 shall hear the allegations and evidence of all persons
5 interested in each of the several parcels of land.

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

9 (3) The commissioners shall determine:

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

12 (b) the minimum interest to be taken; and

13 (c) whether the condemnor has made a good faith effort
14 to purchase an interest in the property;

15 (3)(4) At the conclusion of the aforesaid hearing, the
16 court or judge shall instruct the commissioners as to the
17 law applicable to their deliberations and shall instruct
18 them that their duty is to determine, solely upon the basis
19 of said examination of lands, the evidence produced at the
20 hearing or hearings, and the instructions of the court, the
21 following:

22 (a) the current fair market value of the property
23 sought to be appropriated and all improvements thereon
24 pertaining to the realty and of each and every separate
25 estate and interest therein, if it consists of different

1 parcels, the current fair market value of each parcel and
2 each estate or interest therein must be separately assessed.

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

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

21 (d) if the property sought to be condemned be for a
22 railroad, the cost of good and sufficient fences along the
23 line of such railroad and the cost of cattle guards where
24 fences may cross the line of such railroad;

25 (4)(5) Where there are two or more estates or divided

1 ~~interests--in-property-sought-to-be-condemned, the plaintiff~~
 2 ~~is entitled to have the amount of the award for said~~
 3 ~~property--first--determined, as hereinbefore--stated, as~~
 4 ~~between plaintiff and all defendants claiming any--interests~~
 5 ~~therein. Thereafter--in--the--same--proceeding--the--respective~~
 6 ~~rights--of--each--of--such--defendants--in--and--to--the--award--shall~~
 7 ~~be--determined--by--the--commissioners, under supervision and~~
 8 ~~instruction--of--the--court, and--the--award--apportioned~~
 9 ~~accordingly."~~

10 Section 5. Section 70-30-322, MCA, is amended to read:

11 "70-30-322. Option of original owner or successor in
 12 interest to purchase at sale price. (1) Except as provided
 13 in subsection (3), the owner from whom the real property
 14 interest was originally acquired by eminent domain or
 15 otherwise or, if there is a successor in interest, the OWNER
 16 OR HIS successor in interest shall BE NOTIFIED BY THE SELLER
 17 BY CERTIFIED MAIL AND SHALL have the a 30-day option from
 18 the date of a sale provided for in 70-30-321 to purchase the
 19 interest by offering therefor an amount of money equal to
 20 the highest bid received for the interest at a the sale
 21 ~~provided for in 70-30-321~~. If more than one person claims
 22 an equal entitlement, the option may not be exercised.

23 (2) If no bids are received by the seller and the
 24 optionholder indicates in writing to the seller that he
 25 wishes to exercise the option, the seller shall have the

1 real property interest appraised and sell the interest at
 2 that price to the optionholder.

3 (3) When an interest other than a fee simple interest
 4 in property, which has been acquired for a public purpose by
 5 right of eminent domain, or otherwise, is abandoned or the
 6 purpose for which it was acquired is terminated, the
 7 property reverts to the original owner or his successor in
 8 interest."

-End-

SENATE

STANDING COMMITTEE REPORT

..... March 25 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 891

third reading copy (blue)
color

(Senator Yellowtail)

GENERALLY REVISE THE LAWS PERTAINING TO EMINENT DOMAIN

Respectfully report as follows: That HOUSE BILL No. 891

be amended as follows:

- 1. Title, line 8.
Following: "70-30-110,"
Strike: "70-30-202,"
- 2. Page 2, lines 2 through 14.
Strike: section 2 in its entirety
Renumber: subsequent sections
- 3. Page 3, line 12.
Following: "eounty"
Strike: "judicial district"
Insert: "county"

AND AS AMENDED

BE CONCURRED IN

~~DO NOT PASS~~

~~DO NOT PASS~~

Joe Mazurek
.....
Senator Joe Mazurek Chairman.

1 HOUSE BILL NO. 891

2 INTRODUCED BY ADDY, DONALDSON, SCHYE, HIRSCH,
 3 HANSON, SPAETH, GRADY, POFF, COBB, HOLLIDAY,
 4 PATTERSON, KRUEGER, KOEHNKE, YELLOWTAIL

5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 7 LAWS PERTAINING TO EMINENT DOMAIN; AMENDING SECTIONS
 8 70-30-110, ~~70-30-202~~, 70-30-203, 70-30-207, ~~70-30-301~~ AND
 9 70-30-322, MCA."

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

12 Section 1. Section 70-30-110, MCA, is amended to read:

13 "70-30-110. Survey and location of property to be
 14 taken -- greatest public good -- least private injury. In
 15 all cases where land is required for public use, the state
 16 or its agents in charge of such use may survey and locate
 17 the same, but it must be located in the manner which will be
 18 most compatible with the greatest public good and the least
 19 private injury and subject to the provisions of 70-30-206.
 20 The state or its agents in charge of such public use may,
 21 after giving 30 days' written notice to the owners and
 22 persons in possession of the land, enter upon the land and
 23 make examination, surveys, and maps thereof, and such entry
 24 shall constitute no cause of action in favor of the owners
 25 of the land except from injuries resulting from negligence,

1 wantonness, or malice."

2 ~~Section 2. Section 70-30-202, MCA, is amended to read:~~

3 ~~"70-30-202. Jurisdiction and venue --- complaint and~~
 4 ~~summons required. All proceedings under this chapter must~~
 5 ~~be brought in the district court of the county judicial~~
 6 ~~district in which the property or some part thereof is~~
 7 ~~situated. They must be commenced by filing a complaint and~~
 8 ~~issuing a summons thereon. A summons served under this~~
 9 ~~chapter must contain a notice to the defendant to file and~~
 10 ~~serve an answer. Within 6 months from the date the summons~~
 11 ~~is served, unless the court shortens or enlarges that time~~
 12 ~~for good cause, the court, sitting without a jury, shall~~
 13 ~~commence its trial on the issue of whether a preliminary~~
 14 ~~condemnation order should be issued."~~

15 Section 2. Section 70-30-203, MCA, is amended to read:

16 "70-30-203. Contents of complaint. The complaint must
 17 allege:

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

21 (2) the names of all owners, purchasers under
 22 contracts for deed, mortgagees, and lienholders of record
 23 and any other claimants of the property of record, if known,
 24 or a statement that they are unknown, who must be styled
 25 defendants;

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

2 (4) statements of each of the facts necessary to be
3 found in 70-30-111;

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

8 (6) a description of each interest in real property
9 sought to be taken and whether the same includes the whole
10 or only a part of the entire parcel or tract and a statement
11 that the interest sought is the minimum necessary interest.
12 All parcels lying in the county ~~judicial-district~~ COUNTY and
13 required for the same public use may be included in the same
14 or separate proceedings, at the option of the plaintiff, but
15 the court may consolidate or separate them to suit the
16 convenience of the parties.

17 (7) if a sand, stratum, or formation suitable for use
18 as an underground natural gas storage reservoir is sought to
19 be appropriated, a description thereof and of the land in
20 which it is alleged to be contained and a description of all
21 other property and rights sought to be appropriated for use
22 in connection with the appropriation of the right to store
23 natural gas in and withdraw natural gas from such reservoir.
24 In addition, the complaint shall state facts showing that
25 the underground reservoir is one subject to appropriation by

1 plaintiff; also stating that the underground storage of
2 natural gas in the land sought to be appropriated is in the
3 public interest; that the underground reservoir is suitable
4 and practicable for natural gas storage; that the plaintiff
5 in good faith has been unable to acquire the rights sought
6 to be appropriated hereunder and a statement that the rights
7 and property sought to be appropriated are not prohibited by
8 law; and in addition, the complaint must be accompanied by a
9 certificate from the board of oil and gas conservation as
10 set forth in 82-10-304."

11 Section 3. Section 70-30-207, MCA, is amended to read:
12 "70-30-207. Appointment of commissioners -- affidavit
13 -- compensation. (1) Within ~~±~~ 30 days of entry of a
14 preliminary condemnation order, the defendant shall file a
15 statement of his claim of just compensation. If within 20
16 days of service of defendant's claim plaintiff fails to
17 accept the claim, the court must appoint condemnation
18 commissioners and the commission hearing may be waived by
19 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) that he is possessed of sufficient knowledge of
11 the English language;

12 (b) that he is a resident of a county within the
13 judicial district in which the action is pending;

14 (c) that he is not related within the sixth degree to
15 any party; and

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

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

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

1 plaintiff's offer for the lands and improvements of the
2 defendants;

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

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

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

16 (5) The court shall specify the compensation of the
17 condemnation commissioners, which may not exceed \$250 a
18 hearing day, including expenses. The condemning party shall
19 pay the compensation of the commissioners nominated."

20 ~~Section-5---Section-70-30-301;MCA;is-amended-to-read-~~
21 ~~"70-30-301;---Hearing-----judge---to---preside-----~~
22 ~~determinations--by--commissioners;---{;}--Immediately---upon~~
23 ~~nomination-and-appointment-of-commissioners-under-70-30-207;~~
24 ~~the--same-shall-proceed-to-meet-at-the-time-and-place-stated~~
25 ~~in-the-order-appointing-them;which-time-shall-not--be--more~~

1 than 10 days after the order of appointing, and proceed to
 2 examine the lands sought to be appropriated. At a time
 3 appointed by the judge and within said 10-day period they
 4 shall hear the allegations and evidence of all persons
 5 interested in each of the several parcels of land.

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

9 (3) The commissioners shall determine:

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

12 (b) the minimum interest to be taken; and

13 (c) whether the condemnor has made a good faith effort
 14 to purchase an interest in the property.

15 (3)(4) At the conclusion of the aforesaid hearing, the
 16 court or judge shall instruct the commissioners as to the
 17 law applicable to their deliberations and shall instruct
 18 them that their duty is to determine, solely upon the basis
 19 of said examination of lands, the evidence produced at the
 20 hearing or hearings, and the instructions of the court, the
 21 following:

22 (a) the current fair market value of the property
 23 sought to be appropriated and all improvements thereon
 24 pertaining to the realty and of each and every separate
 25 estate and interest therein; if it consists of different

1 parcels, the current fair market value of each parcel and
 2 each estate or interest therein must be separately assessed.

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

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

21 (d) if the property sought to be condemned be for a
 22 railroad, the cost of good and sufficient fences along the
 23 line of such railroad and the cost of cattle guards where
 24 fences may cross the line of such railroad.

25 (4)(5) Where there are two or more estates or divided

1 interests--in-property-sought-to-be-condemned; the plaintiff
 2 is-entitled-to--have--the--amount--of--the--award--for--said
 3 property---first--determined;--as--hereinbefore--stated;--as
 4 between-plaintiff-and-all-defendants-claiming-any--interests
 5 therein;--Thereafter--in--the--same--proceeding--the--respective
 6 rights-of-each-of-such-defendants-in-and-to-the-award--shall
 7 be--determined--by--the-commissioners;--under-supervision-and
 8 instruction--of--the--court;--and--the--award--apportioned
 9 accordingly."*

10 Section 4. Section 70-30-322, MCA, is amended to read:

11 "70-30-322. Option of original owner or successor in
 12 interest to purchase at sale price. (1) Except as provided
 13 in subsection (3), the owner from whom the real property
 14 interest was originally acquired by eminent domain or
 15 otherwise or, if there is a successor in interest, the OWNER
 16 OR HIS successor in interest shall BE NOTIFIED BY THE SELLER
 17 BY CERTIFIED MAIL AND SHALL have the a 30-day option from
 18 the date of a sale provided for in 70-30-321 to purchase the
 19 interest by offering therefor an amount of money equal to
 20 the highest bid received for the interest at a the sale
 21 provided-for-in-70-30-321. If more than one person claims
 22 an equal entitlement, the option may not be exercised.

23 (2) If no bids are received by the seller and the
 24 optionholder indicates in writing to the seller that he
 25 wishes to exercise the option, the seller shall have the

1 real property interest appraised and sell the interest at
 2 that price to the optionholder.

3 (3) When an interest other than a fee simple interest
 4 in property, which has been acquired for a public purpose by
 5 right of eminent domain, or otherwise, is abandoned or the
 6 purpose for which it was acquired is terminated, the
 7 property reverts to the original owner or his successor in
 8 interest."

-End-

1 HOUSE BILL NO. 894

2 INTRODUCED BY SANDS, KITSELMAN, DARKO

3 BY REQUEST OF THE HOUSE LOCAL

4 GOVERNMENT COMMITTEE

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A WATER
7 DISTRICT MAY EXPAND WHEN IT HAS EXCESS WATER CAPACITY IN THE
8 SAME MANNER AS A SEWER DISTRICT MAY EXPAND WHEN IT HAS
9 EXCESS SEWERAGE CAPACITY; REQUIRING CONSENT OF AFFECTED
10 PROPERTY OWNERS; DELETING THE REQUIREMENT THAT SUCH
11 EXPANSION MUST BE IN UNINCORPORATED AREAS; AMENDING SECTION
12 7-13-2341, MCA."
13

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

15 Section 1. Section 7-13-2341, MCA, is amended to read:

16 "7-13-2341. Addition of land to district. (1) Except
17 as provided in subsection (5), any portion of any county,
18 any municipality, or both, may be added to any district
19 organized under the provisions of this part and part 22 at
20 any time upon petition presented in the manner provided in
21 this part and part 22 for the organization of such district.

22 (2) The petition may be granted by ordinance of the
23 board of directors of such district. Such ordinance shall be
24 submitted for adoption or rejection to the vote of the
25 electors in such district and in the proposed addition at a

1 general or special election held, as provided in this part
2 and part 22, within 70 days after the adoption of such
3 ordinance.

4 (3) If such ordinance is approved, the president and
5 secretary of the board of directors shall certify that fact
6 to the secretary of state and to the county recorder of the
7 county in which such district is located. Upon the receipt
8 of such last-mentioned certificate, the secretary of state
9 shall within 10 days issue his certificate, reciting the
10 passage of said ordinance and the addition of said territory
11 to said district. A copy of such certificate shall be
12 transmitted to and filed with the county clerk of the county
13 in which such district is situated.

14 (4) From and after the date of such certificate, the
15 territory named therein shall be deemed added to and form a
16 part of said district with all the rights, privileges, and
17 powers set forth in this part and necessarily incident
18 thereto.

19 (5) If the board of directors determines that a
20 district has a water facility or a sewer facility with a
21 capacity greater than required to meet the needs of the
22 current district, it may by ordinance, upon petition of
23 contiguous property owners and with the written consent of
24 all affected property owners, expand the district to include
25 land in--an--unincorporated--area, to the extent of excess

1 capacity, without complying with subsections (1) and (2).
2 However, if the board determines that an election should be
3 held or if 40% or more of the members of the district
4 petition for an election, compliance with subsections (1)
5 and (2) is required."

-End-

GOVERNOR'S PROPOSED AMENDMENT TO
HOUSE BILL NO. 891,
REFERENCE COPY
APRIL 18, 1985

1. Page 2, line 1.

Following: "malice."

Insert: "Upon written request of the state or its agents,
the owner shall provide the names and addresses of all
persons who are in possession of his land within 14
days from receipt of the written notice. The state or
its agents shall within 14 days from receipt of such
information furnish written notice to such persons."

-END-

HOUSE BILL NO. 891

INTRODUCED BY ADDY, DONALDSON, SCHYE, HIRSCH,
HANSON, SPAETH, GRADY, POFF, COBB, HOLLIDAY,
PATTERSON, KRUEGER, KOENKE, YELLOWTAIL

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
LAWS PERTAINING TO EMINENT DOMAIN; AMENDING SECTIONS
70-30-110, ~~70-30-202~~, 70-30-203, 70-30-207, ~~70-30-301~~, AND
70-30-322, MCA."

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

Section 1. Section 70-30-110, MCA, is amended to read:

"70-30-110. Survey and location of property to be
taken -- greatest public good -- least private injury. In
all cases where land is required for public use, the state
or its agents in charge of such use may survey and locate
the same, but it must be located in the manner which will be
most compatible with the greatest public good and the least
private injury and subject to the provisions of 70-30-206.
The state or its agents in charge of such public use may,
after giving 30 days' written notice to the owners and
persons in possession of the land, enter upon the land and
make examination, surveys, and maps thereof, and such entry
shall constitute no cause of action in favor of the owners
of the land except from injuries resulting from negligence,

wantonness, or malice. UPON WRITTEN REQUEST OF THE STATE OR
ITS AGENTS, THE OWNER SHALL PROVIDE THE NAMES AND ADDRESSES
OF ALL PERSONS WHO ARE IN POSSESSION OF HIS LAND WITHIN 14
DAYS FROM RECEIPT OF THE WRITTEN NOTICE. THE STATE OR ITS
AGENTS SHALL WITHIN 14 DAYS FROM RECEIPT OF SUCH INFORMATION
FURNISH WRITTEN NOTICE TO SUCH PERSONS."

~~Section 2. 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. A summons served under this~~
~~chapter must contain a notice to the defendant to file and~~
~~serve an answer. Within 6 months from the date the summons~~
~~is served, unless the court shortens or enlarges that time~~
~~for good cause, the court, sitting without a jury, shall~~
~~commence its trial on the issue of whether a preliminary~~
~~condemnation order should be issued."~~

Section 2. Section 70-30-203, MCA, is amended to read:

"70-30-203. Contents of complaint. The complaint must
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;



1 (2) the names of all owners, purchasers under
2 contracts for deed, mortgagees, and lienholders of record
3 and any other claimants of the property of record, if known,
4 or a statement that they are unknown, who must be styled
5 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 interest in real property
14 sought to be taken and whether the same includes the whole
15 or only a part of the entire parcel or tract and a statement
16 that the interest sought is the minimum necessary interest.

17 All parcels lying in the county judicial-district COUNTY and
18 required for the same public use may be included in the same
19 or separate proceedings, at the option of the plaintiff, but
20 the court may consolidate or separate them to suit the
21 convenience of the parties.

22 (7) if a sand, stratum, or formation suitable for use
23 as an underground natural gas storage reservoir is sought to
24 be appropriated, a description thereof and of the land in
25 which it is alleged to be contained and a description of all

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

16 Section 3. Section 70-30-207, MCA, is amended to read:

17 "70-30-207. Appointment of commissioners -- affidavit
18 -- compensation. (1) Within ~~10~~ 30 days of entry of a
19 preliminary condemnation order, the defendant shall file a
20 statement of his claim of just compensation. If within 20
21 days of service of defendant's claim plaintiff fails to
22 accept the claim, the court must appoint condemnation
23 commissioners and the commission hearing may be waived by
24 written consent of both parties, in which case the
25 proceeding shall be conducted in the district court as if

1 the case had been appealed from an award by such
2 commissioners.

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

13 (3) Each commissioner shall possess the following
14 qualifications:

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

17 (b) that he is a resident of a county within the
18 judicial district in which the action is pending;

19 (c) that he is not related within the sixth degree to
20 any party; and

21 (d) that he does not stand in the relation of guardian
22 and ward, master and servant, debtor and creditor, or
23 principal and agent or partner or surety as to any party.

24 (4) At the time of such meeting and nominations, there
25 shall be filed with the court by each nominating party or

1 judge an affidavit of the person so nominated stating
2 substantially as follows:

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

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

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

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

21 (5) The court shall specify the compensation of the
22 condemnation commissioners, which may not exceed \$250 a
23 hearing day, including expenses. The condemning party shall
24 pay the compensation of the commissioners nominated."

25 ~~Section-5---Section-70-30-3017-MCA7-is-amended-to-read:~~

1 470-30-301:--Hearing-----judge---to---preside-----
2 determinations--by--commissioners;---(1)--Immediately--upon
3 nomination-and-appointment-of-commissioners-under-70-30-207,
4 the--same-shall-proceed-to-meet-at-the-time-and-place-stated
5 in-the-order-appointing-them, which-time-shall-not--be--more
6 than--10--days-after-the-order-of-appointing, and-proceed-to
7 examine-the-lands-sought--to--be--appropriated. At--a--time
8 appointed--by--the--judge-and-within-said-10-day-period-they
9 shall-hear-the--allegations--and--evidence--of--all--persons
10 interested-in-each-of-the-several-parcels-of-land;
11 (2)--Such--hearing--shall--be--attended-by-and-presided
12 over-by-the-presiding-judge-who--shall--make--all--necessary
13 rulings-upon-procedure-and-the-admissibility-of-evidence;
14 (3)--The-commissioners-shall-determine:
15 (a)--whether--an--interest--in--the--property--must
16 necessarily-be-taken-for-a-public-use;
17 (b)--the-minimum-interest-to-be-taken; and
18 (c)--whether-the-condemnor-has-made-a-good-faith-effort
19 to-purchase-an-interest-in-the-property;
20 (3)(4) At-the-conclusion-of-the-aforesaid-hearing, the
21 court-or-judge-shall-instruct-the-commissioners--as--to--the
22 law-applicable--to--their--deliberations-and-shall-instruct
23 them-that-their-duty-is-to-determine, solely-upon-the--basis
24 of--said-examination-of-lands, the-evidence-produced-at-the
25 hearing-or-hearings, and-the-instructions-of-the-court,--the

1 following:
2 (a)--the--current--fair--market--value--of-the-property
3 sought-to--be--appropriated--and--all--improvements--thereon
4 pertaining--to--the--realty--and--of-each-and-every-separate
5 estate-and-interest-therein, if--it--consists--of--different
6 parcels,--the--current--fair-market-value-of-each-parcel-and
7 each-estate-or-interest-therein-must-be-separately-assessed;
8 (b)--if--the--property--sought--to--be--appropriated
9 constitutes-only-a-part-of-a-larger-parcel, the-depreciation
10 in--current--fair--market--value--which--will--accrue-to-the
11 portion--not--sought--to--be--condemned--by--reason--of--its
12 severance--from--the--portion-sought-to-be-condemned-and-the
13 construction-of-the-improvements-in-the-manner--proposed--by
14 the-plaintiff;
15 (c)--separately,--how-much-the-portion-not-sought-to-be
16 condemned-and--each--estate--or--interest--therein--will--be
17 benefited,--if--at--all,--by--the--construction--of--the
18 improvements-proposed-by-the-plaintiff,--and-if--the--benefit
19 shall-be--equal--to--the--amount--assessed-under-subsection
20 (3)(b) (4)(b), the-owner-of-the-parcel-shall-be--allowed--no
21 compensation--except--the-value-of-the-portion-taken, but-if
22 the-benefits-shall-be-less-than-the-amount--assessed--under
23 subsection (3)(b) (4)(b), the-former-shall-be-deducted-from
24 the-latter, and-the--remainder--shall--be--the--only--amount
25 allowed-in-addition-to-the-current-fair-market-value;

1 ~~(d) if the property sought to be condemned be for a~~
 2 ~~railroad, the cost of good and sufficient fences along the~~
 3 ~~line of such railroad and the cost of cattle guards where~~
 4 ~~fences may cross the line of such railroad.~~

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

15 Section 4. Section 70-30-322, MCA, is amended to read:

16 "70-30-322. Option of original owner or successor in
 17 interest to purchase at sale price. (1) Except as provided
 18 in subsection (3), the owner from whom the real property
 19 interest was originally acquired by eminent domain or
 20 otherwise or, if there is a successor in interest, the OWNER
 21 OR HIS successor in interest shall BE NOTIFIED BY THE SELLER
 22 BY CERTIFIED MAIL AND SHALL have the a 30-day option from
 23 the date of a sale provided for in 70-30-321 to purchase the
 24 interest by offering therefor an amount of money equal to
 25 the highest bid received for the interest at a the sale

1 ~~provided for in 70-30-321.~~ If more than one person claims
 2 an equal entitlement, the option may not be exercised.

3 (2) If no bids are received by the seller and the
 4 optionholder indicates in writing to the seller that he
 5 wishes to exercise the option, the seller shall have the
 6 real property interest appraised and sell the interest at
 7 that price to the optionholder.

8 (3) When an interest other than a fee simple interest
 9 in property, which has been acquired for a public purpose by
 10 right of eminent domain, or otherwise, is abandoned or the
 11 purpose for which it was acquired is terminated, the
 12 property reverts to the original owner or his successor in
 13 interest."

-End-