

SENATE BILL NO. 242

INTRODUCED BY HARP

BY REQUEST OF THE DEPARTMENT OF HIGHWAYS

IN THE SENATE

JANUARY 25, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON HIGHWAYS & TRANSPORTATION.
	FIRST READING.
FEBRUARY 8, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
	STATEMENT OF INTENT ADOPTED.
FEBRUARY 9, 1989	PRINTING REPORT.
FEBRUARY 10, 1989	SECOND READING, DO PASS.
FEBRUARY 11, 1989	ENGROSSING REPORT.
FEBRUARY 13, 1989	THIRD READING, PASSED. AYES, 49; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 20, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON HIGHWAYS & TRANSPORTATION.
	FIRST READING.
MARCH 13, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 15, 1989	SECOND READING, CONCURRED IN.
MARCH 16, 1989	THIRD READING, CONCURRED IN. AYES, 89; NOES, 6.
	RETURNED TO SENATE.

MARCH 17, 1989

IN THE SENATE

RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 Sen. HARP BILL NO. 342  
 2 INTRODUCED BY HARP  
 3 BY REQUEST OF THE DEPARTMENT OF HIGHWAYS  
 4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE  
 6 RELOCATION ASSISTANCE LAWS AND THE RIGHTS AND DUTIES  
 7 RELATING TO PROPERTY ACQUISITION TO AUTHORIZE AGENCIES TO  
 8 COMPLY WITH THE REQUIREMENTS OF THE FEDERAL UNIFORM  
 9 RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES  
 10 ACT, AS AMENDED; AMENDING SECTIONS 70-31-101, 70-31-102, AND  
 11 70-31-301, MCA; REPEALING SECTIONS 60-4-301 THROUGH 60-4-310  
 12 AND 70-31-201 THROUGH 70-31-207, MCA; AND PROVIDING AN  
 13 IMMEDIATE EFFECTIVE DATE."

14  
 15 STATEMENT OF INTENT

16 A statement of intent is required for this bill because  
 17 it grants rulemaking authority to agencies as defined in  
 18 2-3-102, to adopt rules to carry out the provisions of [this  
 19 act].

20 The legislature intends that the agency have the  
 21 discretion to adopt whatever rules are necessary to ensure  
 22 compliance with the federal requirements in order to obtain  
 23 the maximum federal benefits for displaced persons in  
 24 Montana. It is intended that the agency adopt rules relating  
 25 to eligibility for relocation payments and assistance, type

1 and amounts of payments available to displaced persons, and  
 2 relocation assistance advisory services.  
 3

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

5 **Section 1.** Section 70-31-101, MCA, is amended to read:

6 "70-31-101. **Purpose.** It is the purpose of this chapter  
 7 to:

8 (1) provide for uniform and equitable treatment of  
 9 persons displaced from their homes, businesses, or farms as  
 10 a result of federally assisted programs;

11 (2) establish uniform and equitable land acquisition  
 12 policies for federally assisted programs; and

13 (3) comply with the federal Uniform Relocation  
 14 Assistance and Real Property Acquisition Policies Act of  
 15 1970, as amended."

16 **Section 2.** Section 70-31-102, MCA, is amended to read:

17 "70-31-102. **Definitions.** As used in this chapter,  
 18 unless the context otherwise requires, the following  
 19 definitions apply:

20 (1) "Agency" means any department, agency, or  
 21 instrumentality of the state of Montana, or of a political  
 22 subdivision of the state, or any department, agency, or  
 23 instrumentality of two or more states or two or more  
 24 political subdivisions of the state of--Montana or of a  
 25 political-subdivision-of-the two or more states, and any

1 person who has the authority to acquire property by eminent  
2 domain under state law.

3 (2) "Appraisal" means a written statement  
4 independently and impartially prepared by a qualified  
5 appraiser, setting forth an opinion of defined value of an  
6 adequately described property as of a specified date and  
7 supported by the presentation and analysis of relevant  
8 market information.

9 {2}{3} "Average annual net earnings" means one-half of  
10 any net earnings of a business or farm operation, before  
11 federal and state income taxes, during the 2 taxable years  
12 immediately preceding the taxable year in which such the  
13 business or farm operation moves from real property acquired  
14 for a project of an agency (for which federal financial  
15 assistance is available to pay all or any part of the cost)  
16 or during such any other period as that the acquiring agency  
17 determines to be more equitable for establishing such  
18 earnings and includes any compensation paid by the business  
19 or farm operation to the owner, his spouse, or his  
20 dependents during such the period.

21 {3}{4} "Business" means any lawful activity, excepting  
22 a farm operation, conducted primarily:

23 (a) for the purchase, sale, lease, and rental of  
24 personal and real property and for the manufacture,  
25 processing, or marketing of products, commodities, or any

1 other personal property;

2 (b) for the sale of services to the public;

3 (c) by a nonprofit organization; or

4 (d) solely for the purposes of ~~70-31-201(i)~~ paying  
5 moving or related expenses, for assisting in the purchase,  
6 sale, resale, manufacture, processing, or marketing of  
7 products, commodities, personal property, or services by the  
8 erection and maintenance of an outdoor advertising display  
9 or displays, whether or not such the display or displays are  
10 located on the premises on which any of the above activities  
11 are conducted.

12 {4}{5} "Displaced person" means:

13 (a) any person who ~~on or after July 1, 1971~~ moves  
14 from real property or moves his personal property from real  
15 property;

16 (i) as a direct result of a written notice of intent  
17 to acquire or by the acquisition of such the real property,  
18 in whole or in part, ~~or as the result of the written order~~  
19 ~~of an acquiring agency to vacate real property~~ for a program  
20 or project undertaken by the a displacing agency for which  
21 federal financial assistance will be available to pay all or  
22 any part of the cost; or

23 (ii) on which he is a residential tenant or conducts a  
24 small business, farm operation, or a business defined in  
25 subsection (4)(d), as a direct result of rehabilitation,

demolition, or other displacing activity prescribed by the agency under a program or project undertaken by a displacing agency that has determined that the displacement is permanent and for which federal financial assistance will be available to pay all or any part of the cost; and solely for the

(b) any person who, for purposes of 70-31-201(1) and (2) and 70-31-204, providing moving and related expenses or relocation advisory services only, moves from real property or moves his personal property from real property as a direct result of:

(i) a written notice of intent to acquire or as a direct result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, in whole or in part, on which such the person conducts a business or farm operation, for such a program or project undertaken by a displacing agency; or

(ii) the rehabilitation, demolition, or other displacing activity prescribed by the agency under a program or project undertaken by a displacing agency that has determined that the displacement is permanent. The term "displaced person" also includes a person who moves or discontinues his business or moves other personal property or moves from his dwelling as the direct result of code enforcement activities or a program of rehabilitation of

buildings conducted pursuant to a federal program.

(c) The term "displaced person" does not include a person who:

(i) has been determined, according to criteria established by the agency, to be either unlawfully occupying the displacement dwelling or to have been occupying the dwelling for the purpose of obtaining assistance under this part; or

(ii) occupies property owned by the agency on a short-term rental basis or a period subject to termination when property is needed for the program or project and who was not an occupant of the property at the time it was acquired by the agency.

(5)(6) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(6)(7) "Federal act" means the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" or as that act may be amended.

(7)(8) "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any federal guarantee or insurance.

1        ~~f8~~(9) "Person" means any individual, partnership,  
2        corporation, or association."

3        NEW SECTION. Section 3. Relocation payments and  
4        assistance. For any project that results in the displacement  
5        of a person from his home, business, or farm and for which  
6        federal financial assistance may be available to pay all or  
7        any part of the cost of displacement, an entity of the state  
8        or any public or private entity that has the authority to  
9        acquire property by eminent domain under state law is  
10       authorized to provide relocation assistance and to make  
11       relocation payments to the full extent permitted by the  
12       federal relocation assistance law, 42 U.S.C. 4601, et seq.,  
13       as amended. The entity is authorized to do what may be  
14       necessary or required to obtain for property owners the full  
15       benefit of federal relocation assistance, including the  
16       adoption of methods of administration as may be required by  
17       federal law or rules to carry out the operation of  
18       relocation assistance.

19       NEW SECTION. Section 4. Rulemaking authority. An  
20       agency, as defined in 2-3-102, is authorized to adopt  
21       necessary rules to implement this chapter.

22       **Section 5.** Section 70-31-301, MCA, is amended to read:

23       "70-31-301. Appraisal, negotiation, and other  
24       condemnation policies mandated. An agency which acquires  
25       real property for a program or project (for which federal

1       financial assistance will be available to pay all or any  
2       part of the cost of such program or project) shall comply  
3       with the following policies:

4       (1) The agency shall make every reasonable effort to  
5       acquire expeditiously real property by negotiation.

6       (2) Real property shall be appraised before the  
7       initiation of negotiations, and the owner or his designated  
8       representative shall be given an opportunity to accompany  
9       the appraiser during his inspection of the property. The  
10       head of the agency may prescribe a procedure to waive the  
11       appraisal in cases involving the acquisition by sale or  
12       donation of property with a low fair market value.

13       (3) Before the initiation of negotiations for real  
14       property, an amount shall be established which it is  
15       reasonably believed is just compensation therefor and such  
16       amount shall be offered for the property. In no event shall  
17       such amount be less than the approved appraisal of the fair  
18       market value of such property. Any decrease or increase in  
19       the fair market value of real property prior to the date of  
20       valuation caused by the public improvement for which such  
21       property is acquired or by the likelihood that the property  
22       would be acquired for such improvement, other than that due  
23       to physical deterioration within the reasonable control of  
24       the owner, shall be disregarded in determining the  
25       compensation for the property. The owner of the real

1 property to be acquired shall be provided with a written  
 2 statement of and summary of the basis for the amount  
 3 established as just compensation. Where appropriate, the  
 4 just compensation for the real property acquired and for  
 5 damages to remaining real property shall be separately  
 6 stated.

7 (4) No owner shall be required to surrender possession  
 8 of real property before the agreed purchase price is paid or  
 9 before there is deposited with the court, in accordance with  
 10 applicable law, for the benefit of the owner, an amount not  
 11 less than the approved appraisal of the fair market value of  
 12 such property or the amount of the award of compensation in  
 13 the condemnation proceeding of such property.

14 (5) The construction or development of a program or  
 15 project (for which federal financial assistance will be  
 16 available to pay all or any part of the cost of the program  
 17 or project) shall be so scheduled that, to the greatest  
 18 extent practicable, no person lawfully occupying real  
 19 property shall be required to move from a dwelling (assuming  
 20 a replacement dwelling will be available) or to move his  
 21 business or farm operation without at least 90 days' written  
 22 notice of the date by which such move is required.

23 (6) If an owner or tenant is permitted to occupy the  
 24 real property acquired on a rental basis for a short term or  
 25 for a period subject to termination by the acquiring agency

1 on short notice, the amount of rent required shall not  
 2 exceed the fair rental value of the property to a short-term  
 3 occupier.

4 (7) In no event shall the time of condemnation be  
 5 advanced or negotiations or condemnation and the deposit of  
 6 funds in court for the use of the owner be deferred or any  
 7 other action coercive in nature be taken to compel an  
 8 agreement on the price to be paid for the property.

9 (8) If an interest in real property is to be acquired  
 10 by exercise of the power of eminent domain, formal  
 11 condemnation proceedings shall be instituted. The acquiring  
 12 agency shall not intentionally make it necessary for an  
 13 owner to institute legal proceedings to prove the fact of  
 14 the taking of his real property.

15 (9) If the acquisition of only part of the property  
 16 would leave its owner with an uneconomic remnant, an offer  
 17 to acquire the entire property shall be made.

18 (10) A person whose real property is being acquired  
 19 may, after being fully informed of his right to receive just  
 20 compensation, donate to an agency the property, any interest  
 21 in the property, or any compensation received for the  
 22 property."

23 **NEW SECTION. Section 6. Repealer.** Sections 60-4-301  
 24 through 60-4-310 and 70-31-201 through 70-31-207, MCA, are  
 25 repealed.

LC 0292/01

1        NEW SECTION.   **Section 7.** Extension of authority. Any  
2 existing authority to make rules on the subject of the  
3 provisions of [this act] is extended to the provisions of  
4 [this act].

5        NEW SECTION.   **Section 8.** Codification instruction.  
6 [Sections 3 and 4] are intended to be codified as an  
7 integral part of Title 70, chapter 31, and the provisions of  
8 Title 70, chapter 31, apply to [sections 3 and 4].

9        NEW SECTION.   **Section 9.** Saving clause. [This act]  
10 does not affect rights and duties that matured, penalties  
11 that were incurred, or proceedings that were begun before  
12 [the effective date of this act].

13       NEW SECTION.   **Section 10.** Severability. If a part of  
14 [this act] is invalid, all valid parts that are severable  
15 from the invalid part remain in effect. If a part of [this  
16 act] is invalid in one or more of its applications, the part  
17 remains in effect in all valid applications that are  
18 severable from the invalid applications.

19       NEW SECTION.   **Section 11.** Effective date. [This act]  
20 is effective on passage and approval.

-End-



APPROVED BY COMMITTEE  
ON HIGHWAYS & TRANSPORTATION

SENATE BILL NO. 242

INTRODUCED BY HARP

BY REQUEST OF THE DEPARTMENT OF HIGHWAYS

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE  
RELOCATION ASSISTANCE LAWS AND THE RIGHTS AND DUTIES  
RELATING TO PROPERTY ACQUISITION TO AUTHORIZE AGENCIES TO  
COMPLY WITH THE REQUIREMENTS OF THE FEDERAL UNIFORM  
RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES  
ACT, AS AMENDED; AMENDING SECTIONS 70-31-101, 70-31-102, AND  
70-31-301, MCA; REPEALING SECTIONS 60-4-301 THROUGH 60-4-310  
AND 70-31-201 THROUGH 70-31-207, MCA; AND PROVIDING AN  
IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because  
it grants rulemaking authority to agencies as defined in  
2-3-102, to adopt rules to carry out the provisions of [this  
act].

The legislature intends that the agency have the  
discretion to adopt whatever rules are necessary to ensure  
compliance with the federal requirements in order to obtain  
the maximum federal benefits for displaced persons in  
Montana. It is intended that the agency adopt rules relating  
to eligibility for relocation payments and assistance, type

and amounts of payments available to displaced persons, and  
relocation assistance advisory services.

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

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(1) provide for uniform and equitable treatment of  
persons displaced from their homes, businesses, or farms as  
a result of federally assisted programs;

(2) establish uniform and equitable land acquisition  
policies for federally assisted programs; and

(3) comply with the federal Uniform Relocation  
Assistance and Real Property Acquisition Policies Act of  
1970, as amended."

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subdivision of the state, or any department, agency, or  
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political subdivisions of the state of--Montana or of a  
political-subdivision-of-the two or more states, and any

1 person who has the authority to acquire property by eminent  
2 domain under state law.

3 {2} "Appraisal" means a written statement  
4 independently and impartially prepared by a qualified  
5 appraiser, setting forth an opinion of defined value of an  
6 adequately described property as of a specified date and  
7 supported by the presentation and analysis of relevant  
8 market information.

9 {2}{3} "Average annual net earnings" means one-half of  
10 any net earnings of a business or farm operation, before  
11 federal and state income taxes, during the 2 taxable years  
12 immediately preceding the taxable year in which such the  
13 business or farm operation moves from real property acquired  
14 for a project of an agency (for which federal financial  
15 assistance is available to pay all or any part of the cost)  
16 or during such any other period as that the acquiring agency  
17 determines to be more equitable for establishing such  
18 earnings and includes any compensation paid by the business  
19 or farm operation to the owner, his spouse, or his  
20 dependents during such the period.

21 {3}{4} "Business" means any lawful activity, excepting  
22 a farm operation, conducted primarily:

23 (a) for the purchase, sale, lease, and rental of  
24 personal and real property and for the manufacture,  
25 processing, or marketing of products, commodities, or any

1 other personal property;

2 (b) for the sale of services to the public;

3 (c) by a nonprofit organization; or

4 (d) solely for the purposes of 70-31-201{1} paying  
5 moving or related expenses, for assisting in the purchase,  
6 sale, resale, manufacture, processing, or marketing of  
7 products, commodities, personal property, or services by the  
8 erection and maintenance of an outdoor advertising display  
9 or displays, whether or not such the display or displays are  
10 located on the premises on which any of the above activities  
11 are conducted.

12 {4}{5} "Displaced person" means:

13 {a} any person who on-or-after--July--17--1971, moves  
14 from real property or moves his personal property from real  
15 property;

16 {i} as a direct result of a written notice of intent  
17 to acquire or by the acquisition of such the real property,  
18 in whole or in part, or-as-the-result-of-the-written-order  
19 of-an-acquiring-agency-to-vacate-real-property for a program  
20 or project undertaken by the a displacing agency for which  
21 federal financial assistance will be available to pay all or  
22 any part of the cost; or

23 {ii} on which he is a residential tenant or conducts a  
24 small business, farm operation, or a business defined in  
25 subsection (4)(d), as a direct result of rehabilitation,

1 demolition, or other displacing activity prescribed by the  
 2 agency under a program or project undertaken by a displacing  
 3 agency that has determined that the displacement is  
 4 permanent and for which federal financial assistance will be  
 5 available to pay all or any part of the cost; and solely for  
 6 the

7 (b) any person who, for purposes of 70-31-201(1) and  
 8 (2) and 70-31-204, providing moving and related expenses or  
 9 relocation advisory services only, moves from real property  
 10 or moves his personal property from real property as a  
 11 direct result of:

12 (i) a written notice of intent to acquire or as a  
 13 direct result of the acquisition of or as the result of the  
 14 written order of the acquiring agency to vacate other real  
 15 property, in whole or in part, on which such the person  
 16 conducts a business or farm operation, for such a program or  
 17 project undertaken by a displacing agency; or

18 (ii) the rehabilitation, demolition, or other  
 19 displacing activity prescribed by the agency under a program  
 20 or project undertaken by a displacing agency that has  
 21 determined that the displacement is permanent. The term  
 22 "displaced person" also includes a person who moves or  
 23 discontinues his business or moves other personal property  
 24 or moves from his dwelling as the direct result of code  
 25 enforcement activities or a program of rehabilitation of

1 buildings conducted pursuant to a federal program.

2 (c) The term "displaced person" does not include a  
 3 person who:

4 (i) has been determined, according to criteria  
 5 established by the agency, to be either unlawfully occupying  
 6 the displacement dwelling or to have been occupying the  
 7 dwelling for the purpose of obtaining assistance under this  
 8 part; or

9 (ii) occupies property owned by the agency on a  
 10 short-term rental basis or a period subject to termination  
 11 when property is needed for the program or project and who  
 12 was not an occupant of the property at the time it was  
 13 acquired by the agency.

14 (5)(6) "Farm operation" means any activity conducted  
 15 solely or primarily for the production of one or more  
 16 agricultural products or commodities, including timber, for  
 17 sale or home use and customarily producing such products or  
 18 commodities in sufficient quantity to be capable of  
 19 contributing materially to the operator's support.

20 (6)(7) "Federal act" means the "Uniform Relocation  
 21 Assistance and Real Property Acquisition Policies Act of  
 22 1970" or as that act may be amended.

23 (7)(8) "Federal financial assistance" means a grant,  
 24 loan, or contribution provided by the United States, except  
 25 any federal guarantee or insurance.

1       ~~(8)~~(9) "Person" means any individual, partnership,  
2       corporation, or association."

3       **NEW SECTION. Section 3.** Relocation payments and  
4       assistance. For any project that results in the displacement  
5       of a person from his home, business, or farm and for which  
6       federal financial assistance may be available to pay all or  
7       any part of the cost of displacement, an entity of the state  
8       or any public or private entity that has the authority to  
9       acquire property by eminent domain under state law is  
10      authorized to provide relocation assistance and to make  
11      relocation payments to the full extent permitted by the  
12      federal relocation assistance law, 42 U.S.C. 4601, et seq.,  
13      as amended. The entity is authorized to do what may be  
14      necessary or required to obtain for property owners the full  
15      benefit of federal relocation assistance, including the  
16      adoption of methods of administration as may be required by  
17      federal law or rules to carry out the operation of  
18      relocation assistance.

19      **NEW SECTION. Section 4.** Rulemaking authority. An  
20      agency, as defined in 2-3-102, is authorized to adopt  
21      necessary rules to implement this chapter.

22      **Section 5.** Section 70-31-301, MCA, is amended to read:

23      "70-31-301. Appraisal, negotiation, and other  
24      condemnation policies mandated. An agency which acquires  
25      real property for a program or project [for which federal

1      financial assistance will be available to pay all or any  
2      part of the cost of such program or project) shall comply  
3      with the following policies:

4           (1) The agency shall make every reasonable effort to  
5      acquire expeditiously real property by negotiation.

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7      initiation of negotiations, and the owner or his designated  
8      representative shall be given an opportunity to accompany  
9      the appraiser during his inspection of the property. The  
10     head of the agency may prescribe a procedure to waive the  
11     appraisal in cases involving the acquisition by sale or  
12     donation of property with a low fair market value.

13          (3) Before the initiation of negotiations for real  
14      property, an amount shall be established which it is  
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17      such amount be less than the approved appraisal of the fair  
18      market value of such property. Any decrease or increase in  
19      the fair market value of real property prior to the date of  
20      valuation caused by the public improvement for which such  
21      property is acquired or by the likelihood that the property  
22      would be acquired for such improvement, other than that due  
23      to physical deterioration within the reasonable control of  
24      the owner, shall be disregarded in determining the  
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 2 statement of and summary of the basis for the amount  
 3 established as just compensation. Where appropriate, the  
 4 just compensation for the real property acquired and for  
 5 damages to remaining real property shall be separately  
 6 stated.

7 (4) No owner shall be required to surrender possession  
 8 of real property before the agreed purchase price is paid or  
 9 before there is deposited with the court, in accordance with  
 10 applicable law, for the benefit of the owner, an amount not  
 11 less than the approved appraisal of the fair market value of  
 12 such property or the amount of the award of compensation in  
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 15 project (for which federal financial assistance will be  
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 18 extent practicable, no person lawfully occupying real  
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 5 advanced or negotiations or condemnation and the deposit of  
 6 funds in court for the use of the owner be deferred or any  
 7 other action coercive in nature be taken to compel an  
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 11 condemnation proceedings shall be instituted. The acquiring  
 12 agency shall not intentionally make it necessary for an  
 13 owner to institute legal proceedings to prove the fact of  
 14 the taking of his real property.

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 16 would leave its owner with an uneconomic remnant, an offer  
 17 to acquire the entire-property UNECONOMIC REMNANT shall be  
 18 made.

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 20 may, after being fully informed of his right to receive just  
 21 compensation, donate to an agency the property, any interest  
 22 in the property, or any compensation received for the  
 23 property."

24 NEW SECTION. Section 6. Repealer. Sections 60-4-301  
 25 through 60-4-310 and 70-31-201 through 70-31-207, MCA, are

1 repealed.

2 NEW SECTION. Section 7. Extension of authority. Any  
3 existing authority to make rules on the subject of the  
4 provisions of [this act] is extended to the provisions of  
5 [this act].

6 NEW SECTION. Section 8. Codification instruction.  
7 [Sections 3 and 4] are intended to be codified as an  
8 integral part of Title 70, chapter 31, and the provisions of  
9 Title 70, chapter 31, apply to [sections 3 and 4].

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

14 NEW SECTION. Section 10. Severability. If a part of  
15 [this act] is invalid, all valid parts that are severable  
16 from the invalid part remain in effect. If a part of [this  
17 act] is invalid in one or more of its applications, the part  
18 remains in effect in all valid applications that are  
19 severable from the invalid applications.

20 NEW SECTION. Section 11. Effective date. [This act]  
21 is effective on passage and approval.

-End-

## 1 SENATE BILL NO. 242

2 INTRODUCED BY HARP

3 BY REQUEST OF THE DEPARTMENT OF HIGHWAYS

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE  
6 RELOCATION ASSISTANCE LAWS AND THE RIGHTS AND DUTIES  
7 RELATING TO PROPERTY ACQUISITION TO AUTHORIZE AGENCIES TO  
8 COMPLY WITH THE REQUIREMENTS OF THE FEDERAL UNIFORM  
9 RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES  
10 ACT, AS AMENDED; AMENDING SECTIONS 70-31-101, 70-31-102, AND  
11 70-31-301, MCA; REPEALING SECTIONS 60-4-301 THROUGH 60-4-310  
12 AND 70-31-201 THROUGH 70-31-207, MCA; AND PROVIDING AN  
13 IMMEDIATE EFFECTIVE DATE."

14  
15 STATEMENT OF INTENT

16 A statement of intent is required for this bill because  
17 it grants rulemaking authority to agencies as defined in  
18 2-3-102, to adopt rules to carry out the provisions of [this  
19 act].

20 The legislature intends that the agency have the  
21 discretion to adopt whatever rules are necessary to ensure  
22 compliance with the federal requirements in order to obtain  
23 the maximum federal benefits for displaced persons in  
24 Montana. It is intended that the agency adopt rules relating  
25 to eligibility for relocation payments and assistance, type

1 and amounts of payments available to displaced persons, and  
2 relocation assistance advisory services.

3  
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

5 Section 1. Section 70-31-101, MCA, is amended to read:

6 "70-31-101. Purpose. It is the purpose of this chapter  
7 to:8 (1) provide for uniform and equitable treatment of  
9 persons displaced from their homes, businesses, or farms as  
10 a result of federally assisted programs;11 (2) establish uniform and equitable land acquisition  
12 policies for federally assisted programs; and13 (3) comply with the federal Uniform Relocation  
14 Assistance and Real Property Acquisition Policies Act of  
15 1970, as amended."

16 Section 2. Section 70-31-102, MCA, is amended to read:

17 "70-31-102. Definitions. As used in this chapter,  
18 unless the context otherwise requires, the following  
19 definitions apply:20 (1) "Agency" means any department, agency, or  
21 instrumentality of the state of Montana, or of a political  
22 subdivision of the state, or any department, agency, or  
23 instrumentality of two or more states or two or more  
24 political subdivisions of the state of--Montana or of a  
25 political-subdivision-of-the two or more states, and any

1 person who has the authority to acquire property by eminent  
2 domain under state law.

3 (2) "Appraisal" means a written statement  
4 independently and impartially prepared by a qualified  
5 appraiser, setting forth an opinion of defined value of an  
6 adequately described property as of a specified date and  
7 supported by the presentation and analysis of relevant  
8 market information.

9 {2}{3} "Average annual net earnings" means one-half of  
10 any net earnings of a business or farm operation, before  
11 federal and state income taxes, during the 2 taxable years  
12 immediately preceding the taxable year in which such the  
13 business or farm operation moves from real property acquired  
14 for a project of an agency (for which federal financial  
15 assistance is available to pay all or any part of the cost)  
16 or during such any other period as that the acquiring agency  
17 determines to be more equitable for establishing such  
18 earnings and includes any compensation paid by the business  
19 or farm operation to the owner, his spouse, or his  
20 dependents during such the period.

21 {3}{4} "Business" means any lawful activity, excepting  
22 a farm operation, conducted primarily:

23 (a) for the purchase, sale, lease, and rental of  
24 personal and real property and for the manufacture,  
25 processing, or marketing of products, commodities, or any

1 other personal property;

2 (b) for the sale of services to the public;

3 (c) by a nonprofit organization; or

4 (d) solely for the purposes of 70-31-201{1} paying  
5 moving or related expenses, for assisting in the purchase,  
6 sale, resale, manufacture, processing, or marketing of  
7 products, commodities, personal property, or services by the  
8 erection and maintenance of an outdoor advertising display  
9 or displays, whether or not such the display or displays are  
10 located on the premises on which any of the above activities  
11 are conducted.

12 {4}{5} "Displaced person" means:

13 (a) any person who on-or-after--July--17--1971, moves  
14 from real property or moves his personal property from real  
15 property;

16 (i) as a direct result of a written notice of intent  
17 to acquire or by the acquisition of such the real property,  
18 in whole or in part, or-as-the-result-of-the--written--order  
19 of-an-acquiring-agency-to-vacate-real-property for a program  
20 or project undertaken by the a displacing agency for which  
21 federal financial assistance will be available to pay all or  
22 any part of the cost; or

23 (ii) on which he is a residential tenant or conducts a  
24 small business, farm operation, or a business defined in  
25 subsection (4)(d), as a direct result of rehabilitation,



demolition, or other displacing activity prescribed by the agency under a program or project undertaken by a displacing agency that has determined that the displacement is permanent and for which federal financial assistance will be available to pay all or any part of the cost; and solely for the

(b) any person who, for purposes of 70-31-201 and 70-31-204, providing moving and related expenses or relocation advisory services only, moves from real property or moves his personal property from real property as a direct result of:

(i) a written notice of intent to acquire or as a direct result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, in whole or in part, on which such the person conducts a business or farm operation, for such a program or project undertaken by a displacing agency; or

(ii) the rehabilitation, demolition, or other displacing activity prescribed by the agency under a program or project undertaken by a displacing agency that has determined that the displacement is permanent. The term "displaced person" also includes a person who moves or discontinues his business or moves other personal property or moves from his dwelling as the direct result of code enforcement activities or a program of rehabilitation of

buildings conducted pursuant to a federal program.

(c) The term "displaced person" does not include a person who:

(i) has been determined, according to criteria established by the agency, to be either unlawfully occupying the displacement dwelling or to have been occupying the dwelling for the purpose of obtaining assistance under this part; or

(ii) occupies property owned by the agency on a short-term rental basis or a period subject to termination when property is needed for the program or project and who was not an occupant of the property at the time it was acquired by the agency.

(5)(6) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(6)(7) "Federal act" means the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" or as that act may be amended.

(7)(8) "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any federal guarantee or insurance.

~~(b)(9)~~ "Person" means any individual, partnership, corporation, or association."

**NEW SECTION. Section 3. Relocation payments and assistance.** For any project that results in the displacement of a person from his home, business, or farm and for which federal financial assistance may be available to pay all or any part of the cost of displacement, an entity of the state or any public or private entity that has the authority to acquire property by eminent domain under state law is authorized to provide relocation assistance and to make relocation payments to the full extent permitted by the federal relocation assistance law, 42 U.S.C. 4601, et seq., as amended. The entity is authorized to do what may be necessary or required to obtain for property owners the full benefit of federal relocation assistance, including the adoption of methods of administration as may be required by federal law or rules to carry out the operation of relocation assistance.

**NEW SECTION. Section 4. Rulemaking authority.** An agency, as defined in 2-3-102, is authorized to adopt necessary rules to implement this chapter.

**Section 5.** Section 70-31-301, MCA, is amended to read:

"70-31-301. Appraisal, negotiation, and other condemnation policies mandated. An agency which acquires real property for a program or project (for which federal

financial assistance will be available to pay all or any part of the cost of such program or project) shall comply with the following policies:

(1) The agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property. The head of the agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value.

(3) Before the initiation of negotiations for real property, an amount shall be established which it is reasonably believed is just compensation therefor and such amount shall be offered for the property. In no event shall such amount be less than the approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, shall be disregarded in determining the compensation for the property. The owner of the real

1 property to be acquired shall be provided with a written  
2 statement of and summary of the basis for the amount  
3 established as just compensation. Where appropriate, the  
4 just compensation for the real property acquired and for  
5 damages to remaining real property shall be separately  
6 stated.

7 (4) No owner shall be required to surrender possession  
8 of real property before the agreed purchase price is paid or  
9 before there is deposited with the court, in accordance with  
10 applicable law, for the benefit of the owner, an amount not  
11 less than the approved appraisal of the fair market value of  
12 such property or the amount of the award of compensation in  
13 the condemnation proceeding of such property.

14 (5) The construction or development of a program or  
15 project (for which federal financial assistance will be  
16 available to pay all or any part of the cost of the program  
17 or project) shall be so scheduled that, to the greatest  
18 extent practicable, no person lawfully occupying real  
19 property shall be required to move from a dwelling (assuming  
20 a replacement dwelling will be available) or to move his  
21 business or farm operation without at least 90 days' written  
22 notice of the date by which such move is required.

23 (6) If an owner or tenant is permitted to occupy the  
24 real property acquired on a rental basis for a short term or  
25 for a period subject to termination by the acquiring agency

1 on short notice, the amount of rent required shall not  
2 exceed the fair rental value of the property to a short-term  
3 occupier.

4 (7) In no event shall the time of condemnation be  
5 advanced or negotiations or condemnation and the deposit of  
6 funds in court for the use of the owner be deferred or any  
7 other action coercive in nature be taken to compel an  
8 agreement on the price to be paid for the property.

9 (8) If an interest in real property is to be acquired  
10 by exercise of the power of eminent domain, formal  
11 condemnation proceedings shall be instituted. The acquiring  
12 agency shall not intentionally make it necessary for an  
13 owner to institute legal proceedings to prove the fact of  
14 the taking of his real property.

15 (9) If the acquisition of only part of the property  
16 would leave its owner with an uneconomic remnant, an offer  
17 to acquire the entire-property UNECONOMIC REMNANT shall be  
18 made.

19 (10) A person whose real property is being acquired  
20 may, after being fully informed of his right to receive just  
21 compensation, donate to an agency the property, any interest  
22 in the property, or any compensation received for the  
23 property."

24 NEW SECTION. Section 6. Repealer. Sections 60-4-301  
25 through 60-4-310 and 70-31-201 through 70-31-207, MCA, are

1 repealed.

2 NEW SECTION. Section 7. Extension of authority. Any  
3 existing authority to make rules on the subject of the  
4 provisions of [this act] is extended to the provisions of  
5 [this act].

6 NEW SECTION. Section 8. Codification instruction.  
7 [Sections 3 and 4] are intended to be codified as an  
8 integral part of Title 70, chapter 31, and the provisions of  
9 Title 70, chapter 31, apply to [sections 3 and 4].

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

14 NEW SECTION. Section 10. Severability. If a part of  
15 [this act] is invalid, all valid parts that are severable  
16 from the invalid part remain in effect. If a part of [this  
17 act] is invalid in one or more of its applications, the part  
18 remains in effect in all valid applications that are  
19 severable from the invalid applications.

20 NEW SECTION. Section 11. Effective date. [This act]  
21 is effective on passage and approval.

-End-

## SENATE BILL NO. 242

INTRODUCED BY HARP

BY REQUEST OF THE DEPARTMENT OF HIGHWAYS

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE RELOCATION ASSISTANCE LAWS AND THE RIGHTS AND DUTIES RELATING TO PROPERTY ACQUISITION TO AUTHORIZE AGENCIES TO COMPLY WITH THE REQUIREMENTS OF THE FEDERAL UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT, AS AMENDED; AMENDING SECTIONS 70-31-101, 70-31-102, AND 70-31-301, MCA; REPEALING SECTIONS 60-4-301 THROUGH 60-4-310 AND 70-31-201 THROUGH 70-31-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

## STATEMENT OF INTENT

A statement of intent is required for this bill because it grants rulemaking authority to agencies as defined in 2-3-102, to adopt rules to carry out the provisions of [this act].

The legislature intends that the agency have the discretion to adopt whatever rules are necessary to ensure compliance with the federal requirements in order to obtain the maximum federal benefits for displaced persons in Montana. It is intended that the agency adopt rules relating to eligibility for relocation payments and assistance, type

and amounts of payments available to displaced persons, and relocation assistance advisory services.

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

**Section 1.** Section 70-31-101, MCA, is amended to read:

"70-31-101. **Purpose.** It is the purpose of this chapter to:

(1) provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms as a result of federally assisted programs;

(2) establish uniform and equitable land acquisition policies for federally assisted programs; and

(3) comply with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended."

**Section 2.** Section 70-31-102, MCA, is amended to read:

"70-31-102. **Definitions.** As used in this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Agency" means any department, agency, or instrumentality of the state of Montana, or of a political subdivision of the state, or any department, agency, or instrumentality of two or more states or two or more political subdivisions of the state of--Montana or of a political-subdivision-of-the two or more states, and any

1 person who has the authority to acquire property by eminent  
2 domain under state law.

3 (2) "Appraisal" means a written statement  
4 independently and impartially prepared by a qualified  
5 appraiser, setting forth an opinion of defined value of an  
6 adequately described property as of a specified date and  
7 supported by the presentation and analysis of relevant  
8 market information.

9 (2)(3) "Average annual net earnings" means one-half of  
10 any net earnings of a business or farm operation, before  
11 federal and state income taxes, during the 2 taxable years  
12 immediately preceding the taxable year in which such the  
13 business or farm operation moves from real property acquired  
14 for a project of an agency (for which federal financial  
15 assistance is available to pay all or any part of the cost)  
16 or during such any other period as that the acquiring agency  
17 determines to be more equitable for establishing such  
18 earnings and includes any compensation paid by the business  
19 or farm operation to the owner, his spouse, or his  
20 dependents during such the period.

21 (3)(4) "Business" means any lawful activity, excepting  
22 a farm operation, conducted primarily:

23 (a) for the purchase, sale, lease, and rental of  
24 personal and real property and for the manufacture,  
25 processing, or marketing of products, commodities, or any

1 other personal property;

2 (b) for the sale of services to the public;

3 (c) by a nonprofit organization; or

4 (d) solely for the purposes of 70-31-201(i) paying  
5 moving or related expenses, for assisting in the purchase,  
6 sale, resale, manufacture, processing, or marketing of  
7 products, commodities, personal property, or services by the  
8 erection and maintenance of an outdoor advertising display  
9 or displays, whether or not such the display or displays are  
10 located on the premises on which any of the above activities  
11 are conducted.

12 (4)(5) "Displaced person" means:

13 (a) any person who on-or-after--July--17--1971, moves  
14 from real property or moves his personal property from real  
15 property;

16 (i) as a direct result of a written notice of intent  
17 to acquire or by the acquisition of such the real property,  
18 in whole or in part, or-as-the-result-of-the--written--order  
19 of-an-acquiring-agency-to-vacate-real-property for a program  
20 or project undertaken by the a displacing agency for which  
21 federal financial assistance will be available to pay all or  
22 any part of the cost; or

23 (ii) on which he is a residential tenant or conducts a  
24 small business, farm operation, or a business defined in  
25 subsection (4)(d), as a direct result of rehabilitation,

1 demolition, or other displacing activity prescribed by the  
 2 agency under a program or project undertaken by a displacing  
 3 agency that has determined that the displacement is  
 4 permanent and for which federal financial assistance will be  
 5 available to pay all or any part of the cost; and solely for  
 6 the

7 (b) any person who, for purposes of 70-31-201(1) and  
 8 (2) and 70-31-204, providing moving and related expenses or  
 9 relocation advisory services only, moves from real property  
 10 or moves his personal property from real property as a  
 11 direct result of:

12 (i) a written notice of intent to acquire or as a  
 13 direct result of the acquisition of or as the result of the  
 14 written order of the acquiring agency to vacate other real  
 15 property, in whole or in part, on which such the person  
 16 conducts a business or farm operation, for such a program or  
 17 project undertaken by a displacing agency; or

18 (ii) the rehabilitation, demolition, or other  
 19 displacing activity prescribed by the agency under a program  
 20 or project undertaken by a displacing agency that has  
 21 determined that the displacement is permanent. The term  
 22 "displaced person" also includes a person who moves or  
 23 discontinues his business or moves other personal property  
 24 or moves from his dwelling as the direct result of code  
 25 enforcement activities or a program of rehabilitation of

1 buildings conducted pursuant to a federal program;

2 (c) The term "displaced person" does not include a  
 3 person who:

4 (i) has been determined, according to criteria  
 5 established by the agency, to be either unlawfully occupying  
 6 the displacement dwelling or to have been occupying the  
 7 dwelling for the purpose of obtaining assistance under this  
 8 part; or

9 (ii) occupies property owned by the agency on a  
 10 short-term rental basis or a period subject to termination  
 11 when property is needed for the program or project and who  
 12 was not an occupant of the property at the time it was  
 13 acquired by the agency.

14 (5)(6) "Farm operation" means any activity conducted  
 15 solely or primarily for the production of one or more  
 16 agricultural products or commodities, including timber, for  
 17 sale or home use and customarily producing such products or  
 18 commodities in sufficient quantity to be capable of  
 19 contributing materially to the operator's support.

20 (6)(7) "Federal act" means the "Uniform Relocation  
 21 Assistance and Real Property Acquisition Policies Act of  
 22 1970" or as that act may be amended.

23 (7)(8) "Federal financial assistance" means a grant,  
 24 loan, or contribution provided by the United States, except  
 25 any federal guarantee or insurance.

(b)(9) "Person" means any individual, partnership, corporation, or association."

**NEW SECTION. Section 3.** Relocation payments and assistance. For any project that results in the displacement of a person from his home, business, or farm and for which federal financial assistance may be available to pay all or any part of the cost of displacement, an entity of the state or any public or private entity that has the authority to acquire property by eminent domain under state law is authorized to provide relocation assistance and to make relocation payments to the full extent permitted by the federal relocation assistance law, 42 U.S.C. 4601, et seq., as amended. The entity is authorized to do what may be necessary or required to obtain for property owners the full benefit of federal relocation assistance, including the adoption of methods of administration as may be required by federal law or rules to carry out the operation of relocation assistance.

**NEW SECTION. Section 4:** Rulemaking authority. An agency, as defined in 2-3-102, is authorized to adopt necessary rules to implement this chapter.

**Section 5.** Section 70-31-301, MCA, is amended to read:

"70-31-301. Appraisal, negotiation, and other condemnation policies mandated. An agency which acquires real property for a program or project (for which federal

financial assistance will be available to pay all or any part of the cost of such program or project) shall comply with the following policies:

(1) The agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property. The head of the agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value.

(3) Before the initiation of negotiations for real property, an amount shall be established which it is reasonably believed is just compensation therefor and such amount shall be offered for the property. In no event shall such amount be less than the approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, shall be disregarded in determining the compensation for the property. The owner of the real



1 property to be acquired shall be provided with a written  
 2 statement of and summary of the basis for the amount  
 3 established as just compensation. Where appropriate, the  
 4 just compensation for the real property acquired and for  
 5 damages to remaining real property shall be separately  
 6 stated.

7 (4) No owner shall be required to surrender possession  
 8 of real property before the agreed purchase price is paid or  
 9 before there is deposited with the court, in accordance with  
 10 applicable law, for the benefit of the owner, an amount not  
 11 less than the approved appraisal of the fair market value of  
 12 such property or the amount of the award of compensation in  
 13 the condemnation proceeding of such property.

14 (5) The construction or development of a program or  
 15 project (for which federal financial assistance will be  
 16 available to pay all or any part of the cost of the program  
 17 or project) shall be so scheduled that, to the greatest  
 18 extent practicable, no person lawfully occupying real  
 19 property shall be required to move from a dwelling (assuming  
 20 a replacement dwelling will be available) or to move his  
 21 business or farm operation without at least 90 days' written  
 22 notice of the date by which such move is required.

23 (6) If an owner or tenant is permitted to occupy the  
 24 real property acquired on a rental basis for a short term or  
 25 for a period subject to termination by the acquiring agency

1 on short notice, the amount of rent required shall not  
 2 exceed the fair rental value of the property to a short-term  
 3 occupier.

4 (7) In no event shall the time of condemnation be  
 5 advanced or negotiations or condemnation and the deposit of  
 6 funds in court for the use of the owner be deferred or any  
 7 other action coercive in nature be taken to compel an  
 8 agreement on the price to be paid for the property.

9 (8) If an interest in real property is to be acquired  
 10 by exercise of the power of eminent domain, formal  
 11 condemnation proceedings shall be instituted. The acquiring  
 12 agency shall not intentionally make it necessary for an  
 13 owner to institute legal proceedings to prove the fact of  
 14 the taking of his real property.

15 (9) If the acquisition of only part of the property  
 16 would leave its owner with an uneconomic remnant, an offer  
 17 to acquire the entire-property UNECONOMIC REMNANT shall be  
 18 made.

19 (10) A person whose real property is being acquired  
 20 may, after being fully informed of his right to receive just  
 21 compensation, donate to an agency the property, any interest  
 22 in the property, or any compensation received for the  
 23 property."

24 NEW SECTION. Section 6. Repealer. Sections 60-4-301  
 25 through 60-4-310 and 70-31-201 through 70-31-207, MCA, are

1 repealed.

2 NEW SECTION. Section 7. Extension of authority. Any  
3 existing authority to make rules on the subject of the  
4 provisions of [this act] is extended to the provisions of  
5 [this act].

6 NEW SECTION. Section 8. Codification instruction.  
7 [Sections 3 and 4] are intended to be codified as an  
8 integral part of Title 70, chapter 31, and the provisions of  
9 Title 70, chapter 31, apply to [sections 3 and 4].

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

14 NEW SECTION. Section 10. Severability. If a part of  
15 [this act] is invalid, all valid parts that are severable  
16 from the invalid part remain in effect. If a part of [this  
17 act] is invalid in one or more of its applications, the part  
18 remains in effect in all valid applications that are  
19 severable from the invalid applications.

20 NEW SECTION. Section 11. Effective date. [This act]  
21 is effective on passage and approval.

-End-