

SENATE BILL 329

Introduced by Crippen

2/02	Introduced
2/02	Referred to Judiciary
2/03	Fiscal Note Requested
2/08	Fiscal Note Received
2/09	Fiscal Note Printed
	Died in Committee

1 *Senate* BILL NO. 329
2 INTRODUCED BY *Capp*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
5 CLARIFY THE LAW RELATING TO EMINENT DOMAIN; CLARIFYING THAT
6 COMPENSATION IS BASED ON THE FAIR MARKET VALUE OF THE
7 PROPERTY AT THE TIME OF TAKING; REVISING THE METHOD OF
8 DETERMINING FAIR MARKET VALUE; CLARIFYING ALLOWABLE COSTS OF
9 LITIGATION; REVISING THE TIME FOR WHICH INTEREST IS PAYABLE;
10 AMENDING SECTIONS 70-30-207, 70-30-301, 70-30-302, 70-30-304
11 THROUGH 70-30-306, AND 70-30-308, MCA; AND REPEALING SECTION
12 70-30-313, MCA."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

16 "70-30-207. Appointment of commissioners -- affidavit
17 -- compensation. (1) Within 30 days of entry of a
18 preliminary condemnation order, the defendant shall file a
19 statement of his claim of just compensation. If within 20
20 days of service of defendant's claim plaintiff fails to
21 accept the claim, the court must appoint condemnation
22 commissioners and unless the commission hearing may-be is
23 waived by written consent of both parties, in which case the
24 proceeding shall be conducted in the district court as if
25 the case had been appealed from an award by such the

1 commissioners.

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

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

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

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

19 (c) ~~that--he-is~~ not be related within the sixth degree
20 to 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 the meeting and nominations,
25 there shall be filed with the court by each nominating party

1 or 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; and

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 2.** Section 70-30-301, MCA, is amended to read:

1 "70-30-301. Hearing -- judge to preside --
2 determinations by commissioners. (1) Immediately upon
3 nomination and appointment of commissioners under 70-30-207,
4 the same commissioners shall proceed to meet at the time and
5 place stated in the order appointing them, which ~~time-shall~~
6 may not be more than 10 days after the order of--appointing,
7 and proceed to examine the lands sought to be appropriated.
8 At a time appointed by the judge and within ~~said the~~ 10-day
9 period they shall hear the allegations and evidence of all
10 persons interested in each of the several parcels of land.

11 (2) Such Unless waived by the parties, the hearing
12 shall be attended by and presided over by the presiding
13 judge, who shall make all necessary rulings upon procedure
14 and the admissibility of evidence.

15 (3) At the conclusion of the aforsaid 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 the~~ examination of lands, the evidence produced at
20 the hearing or hearings, and the instructions of the court,
21 the following:

22 (a) the current fair market value at the date of
23 taking of the property sought to be appropriated and all
24 improvements thereon pertaining to the realty and of each
25 and every separate estate and interest therein. It it

1 consists of different parcels, the current fair market value
 2 at the date of taking of each parcel and each estate or
 3 interest therein must be separately assessed.

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

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

23 (d) if the property is sought to be condemned ~~be~~ for a
 24 railroad, the cost of good and sufficient fences along the
 25 line of such the railroad and the cost of cattle guards

1 where fences may cross the line of such the railroad.

2 (4) Where there are two or more estates or divided
 3 interests in property sought to be condemned, the plaintiff
 4 is entitled to have the amount of the award for ~~said the~~
 5 property first determined, as ~~hereinbefore--stated~~ provided
 6 in subsection (3), as between plaintiff and all defendants
 7 claiming any interests ~~therein in the~~ property. ~~Thereafter~~
 8 ~~in In~~ the same proceeding the respective rights of each of
 9 ~~such-defendants-in-and-to~~ defendant in the award shall be
 10 determined by the commissioners, under supervision and
 11 instruction of the court, and the award apportioned
 12 accordingly."

13 **Section 3.** Section 70-30-302, MCA, is amended to read:

14 "70-30-302. Assessing compensation -- date and measure
 15 -- interest fair market value. (1) For the purpose of
 16 assessing compensation, the right ~~thereto-shall-be-deemed to~~
 17 compensation is considered to have accrued at the date of
 18 the service of the summons, and its current fair market
 19 value as of that date shall be the measure of compensation
 20 for all property to be actually taken and the basis of
 21 depreciation in the current fair market value of property
 22 not actually taken but injuriously affected. This ~~shall may~~
 23 not be construed to limit the amount of compensation payable
 24 by the department of highways under the provisions of any
 25 legislation enacted pursuant to the federal Highway

1 Beautification Act of 1965.

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

7 (a)--the-date-on-which--the--right--to--appeal--to--the
8 Montana-supreme-court-expires-or,--if--appeal--is--filed,--to--the
9 date-of-final-decision-by-the-supreme-court,--or

10 (b)--the-date--on--which--the-property-owner-withdraws
11 from-court-the-full-amount-finally-awarded;

12 (3)--if-the--property--owner--withdraws--from--court--a
13 fraction--of--the--amount--finally-awarded,--interest-on-such
14 fraction-shall--cease--on--the--date--it--is--withdrawn--but
15 interest--on--the--remainder--of--the-amount-finally-awarded
16 shall-continue-to-the-earlier-of-the-aforesaid-dates-defined
17 in-(2)(a)-and-(2)(b)-of-this-section-until-the--full--amount
18 is-withdrawn-from-the-court;

19 (4)--None--of--the--amount--finally--awarded-shall-draw
20 interest-after-the-date-on-which-the-right-to-appeal-to--the
21 Montana--supreme--court--expires; Fair market value is the
22 price that would be agreed to by a willing and informed
23 seller and buyer, taking into consideration but not limited
24 to the following factors:

25 (a) the highest and best use for the real estate that

1 is reasonably available or that reasonably may become
2 available and its value for that use, provided that current
3 use may not be presumed to be the highest and best use;

4 (b) the machinery, equipment, and fixtures forming
5 part of the real estate taken; and

6 (c) any other relevant factors on which evidence is
7 offered.

8 (5)(3) No--improvements Improvements put upon the
9 property subsequent to the date of the service of summons
10 shall may not be;

11 (a) included in the assessment of compensation or
12 depreciation in current fair market value,--nor--shall--the
13 same-be; or

14 (b) used as the basis of computing such compensation
15 or depreciation."

16 **Section 4.** Section 70-30-304, MCA, is amended to read:

17 "70-30-304. Appeal to district court from assessment
18 of commissioners. (1) An appeal from any assessment made by
19 the commissioners may be taken and prosecuted in the court
20 where the report of said the commissioners is filed by any
21 interested party interested. Such The appeal must be taken
22 within the period of 30 days after the service upon the
23 appellant of the notice of the filing of the award by the
24 service of notice of such the appeal upon the opposing party
25 or his attorney in such the proceedings and the filing of

1 the ~~same~~ appeal in the district court ~~wherein where~~ the
 2 action is pending, ~~and the same~~. The appeal shall be brought
 3 on for trial upon the same notice and in the same manner as
 4 other civil actions, and unless a jury ~~shall be~~ is waived by
 5 the consent of all parties to ~~such the~~ the appeal, the ~~same~~
 6 appeal shall be tried by jury, ~~and the~~. The amount to which
 7 the appellant may be entitled, by reason of the
 8 appropriation of his property, shall be reassessed upon the
 9 same principle as ~~hereinbefore~~ prescribed for the assessment
 10 of ~~such the~~ the amount by commissioners.

11 (2) Upon any verdict or assessment by commissioners
 12 becoming final, judgment shall be entered declaring that
 13 upon payment of ~~such the~~ the verdict or assessment, together
 14 with the interests and costs allowed by law, if any, the
 15 right to construct and maintain the highway, railroad, or
 16 other public work or improvement and to take, use, and
 17 appropriate the property described in ~~such the~~ the verdict or
 18 assessment for the use and purposes for which ~~said the~~ the land
 19 has been condemned shall, as against the parties interested
 20 in ~~such the~~ the verdict or assessment, be and remain in the
 21 plaintiff and his or its heirs, successors, or assigns
 22 forever.

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

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

13 **Section 5.** Section 70-30-305, MCA, is amended to read:

14 "70-30-305. Condemnor to make offer upon appeal --
 15 award of expenses of litigation. (1) The condemnor shall,
 16 within 30 days after an appeal is perfected from the
 17 commissioner's award or report or not more than 60 days
 18 after waiver of appointment of condemnation commissioners,
 19 submit to condemnee a written final offer of judgment for
 20 the property to be condemned, together with necessary
 21 expenses of condemnee then accrued. If at any time prior to
 22 10 days before trial the condemnee serves written notice
 23 that the offer is accepted, either party may then file the
 24 offer and notice of acceptance, together with proof of
 25 service ~~thereof of the offer and notice of acceptance~~, and

1 thereupon judgment shall be entered. An offer not accepted
2 shall be deemed considered withdrawn and evidence thereof of
3 the offer is not admissible at the trial except in a
4 proceeding to determine costs. The fact that an offer is
5 made but not accepted does not preclude a subsequent offer.

6 (2) In the event of litigation, including litigation
7 before the condemnation commissioners, and when the private
8 property owner prevails by receiving an award in excess of
9 the final offer of the condemnor, the court shall award
10 necessary expenses of litigation to the condemnee."

11 **Section 6.** Section 70-30-306, MCA, is amended to read:

12 "70-30-306. Necessary expenses of litigation defined.

13 (1) Necessary expenses of litigation, as authorized by
14 70-30-305, mean means reasonable and necessary attorney
15 fees, expert witness fees, exhibit costs, and court costs.

16 (2) Reasonable and necessary attorney fees are the
17 customary hourly rates for an attorney's services in the
18 county in which trial is held. Reasonable and necessary
19 attorney fees shall be computed on an hourly basis and may
20 not be computed on the basis of any contingent fee contract
21 entered into after July 1, 1977.

22 (3) Reasonable and necessary expert witness fees may
23 not exceed the customary rate for the services of a witness
24 of such similar expertise in the county in which trial is
25 held."

1 **Section 7.** Section 70-30-308, MCA, is amended to read:

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

8 (a) on an annual basis, utilizing the installment
9 contract method; or

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

15 (2) If the money be is not so paid or deposited, the
16 defendants may have execution as in civil cases, and if the
17 money cannot be made on execution, the court, upon a showing
18 to that effect, must set aside and annul the entire
19 proceedings and restore possession of the property to the
20 defendant if possession has been taken by the plaintiff. If
21 possession of the property is restored to the defendant, the
22 defendant is entitled to recover from the plaintiff all
23 costs and expenses he incurred in the condemnation
24 proceeding."

25 **NEW SECTION. Section 8.** Interest. (1) Except as

1 provided in subsection (2), if an order is made awarding the
2 plaintiff possession, as provided in 70-30-311, the full
3 amount finally awarded draws interest at the rate of 10% per
4 year from the date of the service of the summons until the
5 full amount is finally paid.

6 (2) If the defendant elects to receive payment in
7 annual installments pursuant to 70-30-308(1), interest at
8 the rate of 10% per year applies only to the unpaid
9 balance."

10 NEW SECTION. **Section 9.** Repealer. Section 70-30-313,
11 MCA, is repealed.

12 NEW SECTION. **Section 10.** Codification instruction.
13 [Section 8] is intended to be codified as an integral part
14 of Title 70, chapter 30, part 3, and the provisions of Title
15 70, chapter 30, part 3, apply to [section 8].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB329, as introduced.


DESCRIPTION OF PROPOSED LEGISLATION:


An Act to generally revise and clarify the law relating to eminent domain; clarifying that compensation is based on the fair market value of the property at the time of taking; revising the method of determining fair market value; clarifying allowable costs of litigation; revising the time for which interest is payable.

FISCAL IMPACT: None

TECHNICAL OR MECHANICAL DEFECTS OR CONFLICTS WITH EXISTING LEGISLATION:

Section 6, Page 11, lines 22-25- incomplete sentence. Revision wasn't done.


RAY SHACKLEFORD, BUDGET DIRECTOR 2/8/89
OFFICE OF BUDGET AND PROGRAM PLANNING DATE


BRUCE D. CRIPPEN, PRIMARY SPONSOR 2/8/89
DATE

Fiscal Note for SB329, as introduced

SB 329