

Ballot Language and Complete Text of Initiative No. 152

BALLOT LANGUAGE FOR INITIATIVE NO. 152 (I-152)

INITIATIVE NO. 152

A LAW PROPOSED BY INITIATIVE PETITION

Current law allows governments to take or damage private property for public use, on payment of just compensation. This measure requires state and local governments to compensate property owners for diminished value resulting from a regulation enacted after acquisition of property, unless the government repeals the regulation or waives it as to the affected property. The requirement does not apply to regulations of public health and safety or nuisances. This measure also prohibits condemnation of private property if intended to transfer an interest in the condemned property to a different private party.

This measure requires additional state expenditures of at least \$1 million annually for additional property owner compensation, and increased state administrative and legal expenditures to respond to additional property owner compensation claims. These expenditures may be significantly higher depending on the legislature's and agencies' policy choices.

- FOR requiring government compensation for diminished property values resulting from some regulation, and prohibiting condemnation intended to transfer property to a different private party.

- AGAINST requiring government compensation for diminished property values resulting from some regulation, and prohibiting condemnation intended to transfer property to a different private party.

THE COMPLETE TEXT OF INITIATIVE NO. 152 (I-152)

WHEREAS, Article II, section 29, of the Constitution of the State of Montana declares in no uncertain terms that private property shall not be taken or damaged for public use without just compensation to the full extent of the loss; and

WHEREAS, Article II, section 3, provides, within its provisions, the inalienable rights of all Montana citizens the right to pursue life's basic necessities including defending liberties, acquiring, possessing and protecting property; and

WHEREAS, Article II, section 17, provides that no person shall be deprived of life, liberty, or property without due process of law; and

WHEREAS, despite these Constitutional protections, the rights of private property owners are ignored and the compensation provided is not just compensation in that property owners do not appear to be compensated for property taken or damaged for public use to the full extent of the loss.

NOW THEREFORE, as these rights clearly exist and with an intent to protect private property from the state to the full extent of a loss due to state action resulting in private property being taken or damaged.

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

Section 1. Section 70-30-101, MCA, is amended to read:

~~70-30-101. Definitions Eminent domain defined.~~ (1) Eminent domain is the right of the state to take private property for public use. This right may be exercised in the manner provided in this chapter.

(2) (a) Damages to property occur when government regulations enacted after acquisition of an ownership interest in real property result in diminished value or economic loss to the private property subject to the government regulation.

(b) Damages do not occur when government regulations, including court orders, are enacted for protection of public health and safety including fire and building codes, health and sanitary regulation, solid or hazardous waste regulations, housing of dangerous felons or sexual offenders, liquor control and commonly and historically recognized nuisances under common law prohibiting or eradicating blight, obscenity, nude dancing, junk or abandoned vehicles or any property used in connection with any criminal activity.

(3) Just compensation is:

(a) in the case of the taking of property the current fair market value for the property and improvement sought to be taken plus costs, interest and attorney fees as well as diminished value resulting from loss of goodwill or costs incurred with respect to relocation of a business;

(b) if the property taken is an individual's principal residence just compensation is 125% of the fair market value, plus costs, interest, and attorney fees; or

(c) in the case of damages to property that is damaged, the depreciation in the current fair market value, plus costs, interest and attorney fees as well as diminished value resulting from loss of goodwill or costs incurred with respect to relocation of a business.

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

“70-30-111. Facts necessary to be found before condemnation. Before property can be taken, the condemnor shall show by a preponderance of the evidence that the public interest requires the taking based on the following findings:

- (1) the use to which the property is to be applied is a use authorized by law;
- (2) the condemnor does not intend to transfer a possessory interest in the property to another private party;
- ~~(2)~~ (3) the taking is necessary to the use;
- ~~(3)~~ (4) if already being used for a public use, that the public use for which the property is proposed to be used is a more necessary public use;
- ~~(4)~~ (5) an effort to obtain the property interest sought to be taken was made by submission of a written offer and the offer was rejected.”

Section 3. 70-30-301, MCA, is amended to read:

“70-30-301. Hearing -- judge to preside -- determinations by condemnation commissioners. (1) The condemnation commissioners shall meet at the time and place stated in the order appointing them. The meeting time may not be more than 10 days after the order of appointment. The commissioners shall examine the lands property sought to be taken. At a time appointed by the judge and within the 10-day period, the commissioners shall hear the allegations and evidence of all persons interested in ~~each parcel of land~~ the property sought to be taken.

(2) The hearing must be attended by and presided over by the presiding judge, who shall make all necessary rulings upon procedure and the admissibility of evidence.

(3) (a) At the conclusion of the hearing, the judge shall instruct the commissioners as to the law applicable to their deliberations and shall instruct them that their duty is to determine, based solely upon their examination of lands property, the evidence produced at the hearing or hearings, and the instructions of the court, the appropriate findings provided for in subsections (3)(b) through (3)(d).

(b) The commissioners shall determine the current fair market value of the real property sought to be taken and all improvements pertaining to the real property and of each separate estate and interest in the real property and improvements. If the real property consists of different parcels, the current fair market value of each parcel and each estate or interest in the real property must be separately assessed.

(c) (i) If the property sought to be taken constitutes only a part of a larger parcel, the commissioners shall determine the depreciation in current fair market value that will accrue to the remaining parcel by reason of the condemnation and any improvements made to the affected property. ~~and the construction of the improvements in the manner proposed by the condemnor.~~

~~—(ii) The commissioners shall also determine how much the remaining parcel and each~~

~~estate or interest in the remaining parcel will be benefited, if at all, by the construction of the improvements proposed by the condemnor. If the benefit is equal to the amount assessed under subsection (3)(c)(i), the compensation to the condemnee is limited to the value of the portion taken. However, if the benefit is less than the amount assessed under subsection (3)(c)(i), the benefit to the condemnee must be deducted from the amount assessed under subsection (3)(c)(i) and the remainder is the only amount allowed in addition to the current fair market value.~~

(d) If the property sought to be taken is for a railroad, the commissioners shall also determine the cost of good and sufficient fences along the line of the railroad and the cost of cattle guards where fences may cross the line of the railroad.

(e) Through examination of the property, the commissioners shall determine the appropriate payment for damages to the property taken, as well as to any remaining parcel of property that may be adversely impacted by the project, to assist the court in making a final determination pursuant to 70-30-309.

(4) When there are two or more estates or divided interests in property sought to be taken, the condemnor is entitled to have the amount of the award for the property first determined as between the condemnor and all condemnees claiming any interest in the property. In the same proceeding, the respective rights of each of the condemnees in and to the total award must be determined by the commissioners, under supervision and instruction of the court, and the award must be apportioned accordingly.”

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

“70-30-304. Appeal to district court from assessment of condemnation commissioners. (1) Any party may appeal from any assessment made by the condemnation commissioners in the court in which the report of the commissioners is filed. The appeal must be taken within 30 days after the service upon the parties of the notice of the filing of the award. The appealing party shall serve notice of the appeal upon the opposing party or the opposing party’s attorney and shall file the notice of appeal in the district court in which the action is pending. The appeal must be tried upon the same notice and in the same manner as other civil actions. Unless a jury is waived by the consent of all parties to the appeal, the appeal must be tried by a jury. The amount to which the condemnee may be entitled, by reason of the taking of the condemnee’s property, must be reassessed as prescribed in this part for the assessment of that amount by the commissioners.

(2) Upon any verdict or assessment by the commissioners becoming final, judgment must be entered declaring that upon payment of the amount of the verdict or assessment, together with the interests and costs allowed by law, if any, the condemnor has the right to construct and maintain the public use project and to take the property described in the verdict or assessment for the use and purposes for which the property has been taken. The rights granted in the verdict or assessment remain in the condemnor and the condemnor’s heirs, successors, or assigns forever.

(3) If the party appealing from the award of the commissioners does not succeed in changing to the appellant’s advantage the amount finally awarded in the proceeding, the appellant may not recover the costs of the appeal, ~~but all the costs of the appellee in the appeal must be taxed against and recovered from the appellant.~~ However, upon the trial

of the appeal, the appellant may contest the right of any party to any of the property mentioned and set forth or involved in the appeal that was located after the preliminary survey of any highway or railroad, seeking to condemn a right-of-way pursuant to the provisions of this chapter if the condemnation proceedings are begun within 1 year after the preliminary survey.”

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

“70-30-322. Option of original owner or successor in interest to purchase at sale price. (1) Except as provided in subsection (3), the owner from whom the real property interest was originally acquired by eminent domain or otherwise or the owner's successor in interest, if there is a successor in interest, must be notified by the seller by certified mail and has a 30-day option from the date of a sale provided for in 70-30-321 to purchase the interest by offering an amount of money equal to the lesser of the highest bid received for the interest at the sale or an amount equal to the price paid to the original owner at the time of condemnation excluding costs and fees. ~~If more than one person claims an equal entitlement, the option may not be exercised.~~

(2) If bids are not received by the seller and the optionholder indicates in writing to the seller that the optionholder wishes to exercise the option, the seller shall ~~have the real property interest appraised and~~ sell the interest at an amount equal to the price paid to the original owner at the time of condemnation excluding costs and fees ~~that price~~ to the optionholder.

(3) When an interest, other than a fee simple interest, in property that has been acquired for a public purpose by right of eminent domain, or otherwise, is abandoned or when the purpose for which it was acquired is terminated, the property reverts to the original owner or the original owner's successor in interest.”

NEW SECTION. Section 6. Limitation on public use. Private property may not be taken if at the time of condemnation the condemnor intends to make a direct or indirect transfer of a possessory interest in the property taken to another private party.

NEW SECTION. Section 7. Just Compensation for damaged property. (1) The current owner of private real property is entitled to just compensation when property is damaged by the enactment or enforcement of government regulations.

(2) If the right to use, possess, sell or improve real property is impaired by a government regulation after the effective date of [this Act] the owner of the property shall be entitled to just compensation. Prior to filing a claim for just compensation under [this section], a property shall not be required to pursue or exhaust administrative remedies but must make a written demand to the government body that enacts or enforces the damaging regulation. Such demand may be submitted at any time from the enactment, up through a two year period from the initial enforcement of a damaging regulation, seeking just compensation, a permanent waiver from the regulation or a retraction of the regulation by the government body that enacted the regulation.

(3) A government body receiving a written demand pursuant to [subsection (2)] must, within a 90 day period following the date of receipt of the written demand and without requiring that the property owner participate in any administrative proceedings,

take final action to permanently waive the regulation as applied to the affected parcel, retract the regulation or pay just compensation. If the government body does not satisfy the written demand by providing the amount demanded for just compensation or permanently removing the effect of the regulation within the 90 days from the filing of the demand, a prevailing owner shall have a cause of action for just compensation and shall be entitled to attorney fees, costs, and expenses incurred in pursuing the action. The government may, at any time prior to final proceedings on the disposition of the property owner's claim, take final action to permanently waive the regulation as applied to the affected parcel, retract the regulation or pay just compensation in satisfaction of the claim, but the government shall also pay actual attorney fees, costs, and expenses incurred in pursuing the action.

(4) An owner of real property affected by enforcement of a government regulation may apply to use or develop the affected property in a manner consistent with the permissible uses of the property in existence after the effective date of [this Act] or the date upon which the owner acquired record title in the property, whichever is later. If a permissible use under [this section] is not granted by the governing body within 120 days following the application for permit, the owner shall have a claim for just compensation and shall, if the owner prevails, be entitled to attorney fees, costs, and expenses incurred in pursuing the action.

(5) For purposes of [this section] the date upon which the owner acquires record title in the property, in the case of property held by lineal descendants of a property owner and acquired by such descendants through devise or gift shall be the date their predecessor in interest acquired title to the property. This subsection [subsection 5] applies to all interests acquired in the transfer of legal title and not just instances where the interest acquired is the same.

(6) This section [section 7] shall not apply to government regulations enforced pursuant to [section 1, subsection (2)(b)] of [this Act].

NEW SECTION. Section 8. Codification instruction. [Sections 6 and 7] are intended to be codified as an integral part of Title 70, chapter 30, part 2, and the provisions of Title 70, chapter 30, part 2 apply to [sections 6 and 7].

NEW SECTION. Section 9. Severability. If part of [this Act] is invalid all valid parts remain in effect. If part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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

NEW SECTION. Section 11. Applicability. [This Act] applies to legislative proceedings begun after the effective date of [this Act].

NEW SECTION. Section 12. Effective date. [This Act] is effective upon approval by the electorate.