

HOUSE BILL NO. 617

INTRODUCED BY K. FLYNN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT DIRECTING A THE ENERGY AND TELECOMMUNICATIONS  
5 INTERIM COMMITTEE TO STUDY CONDEMNATION LAWS AND THEIR INTERPLAY WITH THE MAJOR  
6 FACILITY SITING ACT, THE MONTANA ENVIRONMENTAL POLICY ACT, THE REGULATORY FUNCTIONS  
7 OF THE PUBLIC SERVICE COMMISSION, ~~THE FAIR TREATMENT OF LANDOWNERS IN CONDEMNATION~~  
8 ~~PROCEEDINGS, AND LANDOWNERS' DUE PROCESS RIGHTS IN CONDEMNATION PROCEEDINGS;~~  
9 ~~REQUIRING THE COMMITTEE TO REPORT ITS FINDINGS TO THE ENVIRONMENTAL QUALITY COUNCIL;~~  
10 ~~APPROPRIATING MONEY FOR THE COMMITTEE; PROVIDING AN APPROPRIATION;~~ AND PROVIDING AN  
11 EFFECTIVE DATE AND A TERMINATION DATE."

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13 WHEREAS, issues related to condemnation have been brought before the 62nd and 63rd Legislatures;  
14 and

15 WHEREAS, numerous landowners have raised concerns about private entities having the authority to  
16 condemn private property; and

17 WHEREAS, the power of eminent domain is a power belonging to the government under the Montana  
18 and U.S. Constitutions; and

19 WHEREAS, this power may be delegated only to private, non-governmental entities for statutorily  
20 enumerated public uses; and

21 ~~WHEREAS, the intent of the Montana Major Facility Siting Act is to provide adequate remedies for the~~  
22 ~~protection of the environment and to prevent unreasonable depletion and degradation of natural resources; and~~

23 WHEREAS, the intent of the Montana Environmental Policy Act is to provide for adequate review of state  
24 actions in order to ensure that environmental attributes are fully considered by the Legislature in enacting laws  
25 to fulfill constitutional obligations and that the public is informed of the anticipated impacts in Montana of potential  
26 state actions; and

27 ~~WHEREAS, the grant of power of eminent domain and the use of eminent domain are not contemplated~~  
28 ~~by either the Montana Major Facility Siting Act or the Montana Environmental Policy Act; and~~

29 WHEREAS, both the Montana Major Facility Siting Act and the Montana Environmental Policy Act are  
30 significant factors in the determination of where projects are located; and



1 WHEREAS, a number of legislators have committed to addressing due process and fairness issues  
2 related to eminent domain.

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

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6 ~~NEW SECTION. Section 1. Interim study on condemnation. (1) There is a committee to study~~  
7 ~~condemnation as provided in [section 2]. The committee consists of:~~

8 ~~(a) two members of the house of representatives who have served at least one term on the federal~~  
9 ~~relations, energy, and telecommunications committee or natural resources committee and are appointed by the~~  
10 ~~speaker, one from each party;~~

11 ~~(b) two members of the senate who have served at least one term on either the natural resources or~~  
12 ~~energy and telecommunications committee and are appointed by the president, one from each party;~~

13 ~~(c) one attorney who predominantly represents landowners, selected by mutual agreement of the~~  
14 ~~speaker of the house and the president of the senate;~~

15 ~~(d) two attorneys who represent either transmission line or pipeline companies, selected by mutual~~  
16 ~~agreement of the speaker of the house and the president of the senate; and~~

17 ~~(e) one representative from the agricultural community, selected by mutual agreement of the speaker~~  
18 ~~of the house and the president of the senate.~~

19 ~~(2) The members of the committee, other than the legislator members, shall serve for no compensation~~  
20 ~~but are entitled to reimbursement for travel, meals, and lodging as provided in Title 2, chapter 18, part 5. The~~  
21 ~~legislator members are entitled to compensation and expenses as provided in 5-2-302.~~

22 ~~(3) The committee may travel to the extent it considers appropriate to achieve an enhanced level of~~  
23 ~~public participation in the study.~~

24 ~~(4) The committee is attached for administrative purposes to the legislative services division.~~

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26 **NEW SECTION. Section 1. Study INTERIM STUDY of condemnation -- determinations -- submission**  
27 **of findings.** (1) The ENERGY AND TELECOMMUNICATIONS INTERIM committee established in [section 4] shall  
28 CONDUCT A study OF condemnation:

29 ~~(2) The study must include INCLUDING a comprehensive review of:~~

30 (a) condemnation laws and their interplay with the Montana Major Facility Siting Act and the Montana

1 Environmental Policy Act;

2 (b) the regulatory functions of the public service commission related to linear facilities, including  
3 transmission lines and pipelines, and whether the commission has the authority to play a larger role in the siting  
4 of linear facilities in Montana;

5 (c) the fair treatment of landowners in condemnation proceedings; and

6 (d) landowners' due process rights in condemnation proceedings; and opportunities to strengthen those  
7 rights.

8 (E) TAXPAYERS' CONCERNS IN CONDEMNATION PROCEEDINGS;

9 (F) THE EFFECT OF LEGAL FEES ON COSTS FOR ALL PARTIES; AND

10 (G) LAWS RELATED TO CONDEMNATION IN STATES BORDERING MONTANA AND WHETHER ASPECTS OF THOSE  
11 LAWS COULD BE USED TO IMPROVE LAWS RELATED TO CONDEMNATION IN MONTANA.

12 ~~(3)(2)~~ Upon completion of the study, the THE committee shall make recommendations, if appropriate,  
13 to:

14 ~~\_\_\_\_\_ (a) define "merchant transmission" in the Montana Code Annotated and revise how merchant~~  
15 ~~transmission lines are treated under the law in terms of siting, regulation, and condemnation;~~

16 ~~\_\_\_\_\_ (b) develop or enhance public service commission regulation of linear facilities in Montana;~~

17 ~~(e)(A)~~ establish a process that outlines when a condemnor must meet with landowners whose property  
18 may be included in the siting of a linear project;

19 ~~(d)(B)~~ streamline the processes included in the Montana Major Facility Siting Act and the Montana  
20 Environmental Policy Act to allow a condemnor to efficiently proceed with a project; and

21 ~~(e)(C)~~ create a process in which condemnors communicate with and meet with impacted or potentially  
22 impacted landowners early in the siting of a project in order to protect landowner rights and to facilitate  
23 communication between landowners and condemnors and to avoid litigation.

24 ~~\_\_\_\_\_ (4) The committee shall complete the study by June 30, 2014, and report its findings to the environmental~~  
25 ~~quality council established by 5-16-101. The report must include recommendations of legislation that should be~~  
26 ~~pursued to implement the committee's findings pursuant to subsection (3).~~

27 (3) THE COMMITTEE SHALL PREPARE A FINAL REPORT OF ITS FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS  
28 AND SHALL PREPARE DRAFT LEGISLATION WHENEVER APPROPRIATE.

29  
30 NEW SECTION. Section 2. Appropriation. There is appropriated from the general fund to the

1 legislative services division ~~\$20,000 for use in the 2015 biennium by the condemnation committee for the~~  
2 ~~purposes provided in [section 2]~~ \$8,000 FOR USE BY THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE TO  
3 COMPLETE THE STUDY REQUIRED BY [SECTION 1].

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5 NEW SECTION. Section 3. Effective date. [This act] is effective July 1, 2013.

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7 NEW SECTION. SECTION 4. TERMINATION. [THIS ACT] TERMINATES DECEMBER 31, 2014.

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