



**Montana Legislative Services Division**  
**Office of Research and Policy Analysis**

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January 27, 2012

**To:** Law and Justice Interim Committee members  
**Fr:** Sonja Nowakowski, Research Analyst  
**Re:** Eminent domain discussion

To assist the Law and Justice Interim Committee in its examination of eminent domain, staff is sending members a copy of a Legislative Services publication called "Eminent Domain in Montana. The handbook was the result of an eminent domain study conducted by a legislative committee during the 1999-2000 interim.

The handbook was developed, and is updated each interim, to describe Montana's eminent domain laws in a format that is user-friendly and that answers the most frequently asked questions. It offers an overview of condemnation proceedings and how compensation is assessed. A chart outlining the eminent domain process is included on page 13 of the handbook. During your February 24 meeting, staff will briefly review the eminent domain process, outline related legislation from the 2011 session, and provide an update on eminent domain litigation.

The Environmental Quality Council (EQC) also adopted a 2011-2012 work plan that includes eminent domain. Members indicated a policy discussion about what is a public use was needed, along with a review of how other states are grappling with new concerns about eminent domain authority. The EQC started its review of public uses in January and also received an update on litigation related to House Bill No. 198. A memo prepared by Legislative Services Staff Attorney Helen Thigpen that provides an update on that litigation is included in your mailing.

Based on the Law and Justice Interim Committee work plan, members indicated that they are interested in learning more about the legal procedures for condemnation, including the process for condemnations, how negotiations and mediation are conducted, just compensation, and appeals.

The Montana Legislature has wrestled with eminent domain for years. In 1999, the Montana Legislature concluded that because legislators and citizens alike were confused or not fully versed on the statutes relating to eminent domain, a careful and deliberate study was warranted. House Joint Resolution No. 34 (HJR 34) was passed. The Legislative Council assigned HJR 34 to the EQC and requested the Law, Justice, and Indian Affairs Interim Committee and its staff assist the EQC.

The study was partly in response to five bills that were introduced during the 1999 Legislative session that would have made significant changes to the eminent domain statutes. None of those bills were passed or approved. The subcommittee tasked itself with studying the implementation of eminent domain laws, the adequacy of the statutes as they related to the rights of property owners, and whether Montana's eminent domain laws needed revision. The result was three volumes of information, including four bill drafts to revise eminent domain laws. The bill drafts

sought to limit landowner liability for condemned property, clarify existing laws, clarify that an easement is the preferred interest to be taken in a condemnation proceeding, and implement damage reduction or mitigation measures. The handbook mentioned above also was a result of that study.

As the LJIC begin work on the topic of eminent domain, it may be useful for members to consider whether its work, for example, could focus on:

- preliminary condemnation proceedings;
- assessment of compensation; or
- burden of proof standards.

Staff will be seeking direction on how best to narrow this study. I look forward to working with you. Please feel free to contact me any time.

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