

SENATE JOINT RESOLUTION NO. 21

INTRODUCED BY J. PETERSON

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A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO EVALUATE EMINENT DOMAIN IN MONTANA, INCLUDING THE ENUMERATED PUBLIC USES, DETERMINATION OF NECESSITY, AND COMPENSATION FOR PRIVATE PROPERTY OWNERS WHOSE LAND MAY BE SOUGHT TO BE CONDEMNED.

WHEREAS, there has been increased focus on entities possessing the power of eminent domain in Montana; and

WHEREAS, the Montana and U.S. Constitutions guarantee that private property may not be taken or damaged for public use without just compensation; and

WHEREAS, eminent domain should only be exercised as a last resort by qualified entities for statutorily enumerated public uses; and

WHEREAS, the power of eminent domain is important for private entities who are unable to reach agreement with a landowner despite negotiating in good faith; and

WHEREAS, the power of eminent domain is critical to the ability to provide reliable public services to the public.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) review the public uses enumerated in section 70-30-102, MCA, and the express or implied authority granted to specific entities to pursue eminent domain for a public use, INCLUDING WHETHER MERCHANT TRANSMISSION LINES SHOULD BE CONSIDERED A PUBLIC USE;

(2) analyze the impact of eminent domain on the ability to obtain fair market value and appropriate compensation levels, INCLUDING WHETHER CURRENT LAW CONSIDERS DAMAGES TO THE CONDEMNEE'S REMAINING INTERESTS;

(3) review notice requirements, appraisal requirements, and other statutory requirements to ensure that



1 good faith negotiations can occur without an underlying threat of condemnation;

2 (4) analyze appropriate methods to compensate landowners who are directly impaired by aboveground
3 impacts versus at-grade or below-grade impacts;

4 (5) REVIEW ALTERNATIVES THAT WOULD PROPOSE THE USE OF PUBLIC LAND PRIOR TO THE USE OF EMINENT
5 DOMAIN TO CONDEMN PRIVATE LAND;

6 (6) ANALYZE THE OPTIONS FOR WHAT CONSTITUTES A PUBLIC USE AND, IF NECESSARY, PROVIDE A STATUTORY
7 DEFINITION OF THE TERM;

8 (7) DETERMINE IF PROPERTY OWNERS ARE ADEQUATELY REIMBURSED FOR COSTS INCURRED DURING
9 NEGOTIATIONS THAT OCCUR PRIOR TO EMINENT DOMAIN PROCEEDINGS;

10 (8) REVIEW OPTIONS FOR IMPLEMENTING AN ANALYSIS OF COSTS TO MONTANA CONSUMERS WHEN A PROJECT
11 THAT MAY USE EMINENT DOMAIN IS ENERGY-RELATED AND WHETHER THOSE COSTS SHOULD BE MITIGATED IN THE
12 PERMITTING PROCESS.

13 BE IT FURTHER RESOLVED, that upon completion of the study, the committee make recommendations,
14 if appropriate, to:

15 (1) provide a statutory definition of "just compensation" as provided in Article II, section 29, of the
16 Montana Constitution; and

17 (2) clarify existing law to ensure that affected property owners whose land may be taken for a public use
18 are provided just compensation.

19 BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be
20 presented to and reviewed by an appropriate committee designated by the Legislative Council.

21 BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review
22 requirements, be concluded prior to September 15, 2012.

23 BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions,
24 comments, or recommendations of the appropriate committee, be reported to the 63rd Legislature.

25 - END -