

What is Eminent Domain?

- Eminent domain is the power to take private property that is necessary for a public use. The power of eminent domain is held by the State of Montana and by the U.S. Federal Government.

How HB 198 Changed The Law

- HB 198 changed the law by **delegating the power of eminent domain to persons holding a permit issued under the Major Facility Siting Act (MFSA)** codified at §75-20-113, MCA. Prior to passage of HB 198, those with delegated power to condemn land were public entities and corporations that were regulated by the state. A list of the entities with delegated power to condemn property is found in the legislative Report on HJR 34.

What Does SB 180 Do As Amended?

- SB 180 **repeals the power of eminent domain to persons holding a permit issued under the Major Facility Siting Act (MFSA)** codified at §75-20-113, MCA.

Why Amend The Law? To return to a more equitable balance between landowner and condemnor.

- **HB 198 gave the State of Montana's power of eminent domain to corporations serving as agents of the U. S. Federal government.** MATL, and other power lines like it, are regulated by the Federal Energy Regulatory Commission (FERC), but not by the Montana Public Service Commission.
- **MFSA was not designed to address the taking of private property** – it is an environmental review process for siting certain linear infrastructure and facilities and does not provide oversight for persons/corporations who hold a certificate of compliance under MFSA.
- Eminent domain law prior to HB 198 required that the condemnor proved public use in court. MFSA does not necessitate this. Thus, the **landowner is deprived the current constitutional protections for private property** when the MFSA permittee is granted the power of eminent domain upon certification by MFSA.
- Over the last 30 years MFSA has been repeatedly amended. **Is it wise, fair or even constitutional for the state to award its power of eminent domain to a certificate of compliance holder under MFSA?** There is no absolute certainty that MFSA will remain as written in 2011.

What Happens If SB 180 Passes As Amended?

- **Development in Montana will not come to a screeching halt if SB 180 passes.**
- **Utilities** such as Northwestern Energy and the Rural Electric cooperatives **can still build distribution power lines.**
- **Common carrier pipelines will still have** the state's power of **eminent domain.**
- **Development of renewables** will not be affected.
- The power of federal **eminent domain will still apply to railroads.**
- **Montana landowners will not be deprived** the current procedural and constitutional protections for private property.