EXHIBIT 5
DATE 3-25-13
HB 617

HOUSE BILL NO. 617

INTRODUCED BY K. FLYNN

A BILL FOR AN ACT ENTITLED: "AN ACT DIRECTING A COMMITTEE TO STUDY CONDEMNATION LAWS AND THEIR INTERPLAY WITH THE MAJOR FACILITY SITING ACT, THE MONTANA ENVIRONMENTAL POLICY ACT, THE REGULATORY FUNCTIONS OF THE PUBLIC SERVICE COMMISSION, THE FAIR TREATMENT OF LANDOWNERS IN CONDEMNATION PROCEEDINGS, AND LANDOWNERS' DUE PROCESS RIGHTS IN CONDEMNATION PROCEEDINGS; REQUIRING THE COMMITTEE TO REPORT ITS FINDINGS TO THE ENVIRONMENTAL QUALITY COUNCIL; APPROPRIATING MONEY FOR THE COMMITTEE; AND PROVIDING AN EFFECTIVE DATE."

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

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

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

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

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

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

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

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

WHEREAS, a number of legislators have committed to addressing due process and fairness issues

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1 related to eminent domain.
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3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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5 NEW SECTION. **Section 1. Interim study on condemnation.** (1) There is a committee to study
6 condemnation as provided in [section 2]. The committee consists of:
7 (a) two members of the house of representatives who have served at least one term on the federal
8 relations, energy, and telecommunications committee or natural resources committee and are appointed by the
9 speaker, one from each party;
10 (b) two members of the senate who have served at least one term on either the natural resources or
11 energy and telecommunications committee and are appointed by the president, one from each party;
12 (c) one attorney who predominantly represents landowners, selected by mutual agreement of the
13 speaker of the house and the president of the senate;
14 (d) two attorneys who represent either transmission line or pipeline companies, selected by mutual
15 agreement of the speaker of the house and the president of the senate; and
16 (e) one representative from the agricultural community, selected by mutual agreement of the speaker
17 of the house and the president of the senate.
18 (2) The members of the committee, other than the legislator members, shall serve for no compensation
19 but are entitled to reimbursement for travel, meals, and lodging as provided in Title 2, chapter 18, part 5. The
20 legislator members are entitled to compensation and expenses as provided in 5-2-302.
21 (3) The committee may travel to the extent it considers appropriate to achieve an enhanced level of
22 public participation in the study.
23 (4) The committee is attached for administrative purposes to the legislative services division.
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25 NEW SECTION. **Section 2. Study of condemnation -- determinations -- submission of findings.**
26 (1) The committee established in [section 1] shall study condemnation.
27 (2) The study must include a comprehensive review of:
28 (a) condemnation laws and their interplay with the Montana Major Facility Siting Act and the Montana
29 Environmental Policy Act;
30 (b) the regulatory functions of the public service commission related to linear facilities, including

transmission lines and pipelines, and whether the commission has the authority to play a larger role in the siting of linear facilities in Montana;

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

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

(3) Upon completion of the study, the committee shall make recommendations, if appropriate, to:

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

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

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

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

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

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

NEW SECTION. **Section 3. Appropriation.** There is appropriated from the general fund to the legislative services division $20,000 for use in the 2015 biennium by the condemnation committee for the purposes provided in [section 2].

NEW SECTION. **Section 4. Effective date.** [This act] is effective July 1, 2013.

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