

**MINUTES**

**MONTANA SENATE  
56th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON STATE ADMINISTRATION**

**Call to Order:** By **CHAIRMAN MACK COLE**, on April 7, 1999 at 10:00  
A.M., in Room 331 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Mack Cole, Chairman (R)  
Sen. Don Hargrove, Vice Chairman (R)  
Sen. Jon Tester (D)  
Sen. Jack Wells (R)  
Sen. Bill Wilson (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Keri Burkhardt, Committee Secretary  
David Niss, Legislative Branch

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HJ 34, 3/29/1999; SR 5,  
2/3/1999  
Executive Action: HJ 34, SR 5

**HEARING ON HJ 34**

**Sponsor:** REP. CARLEY TUSS, HD 46, BLACK EAGLE

**Proponents:** REP. SYLVIA BOOKOUT-REINIKE, HD 71, ALBERTON  
Aaron Browning, Northern Counties Resource Council

**Opponents:** None

**Opening Statement by Sponsor:*****{Tape : 1; Side : A; Approx. Time Counter : 10:11 - 10:24}***

**REP. CARLEY TUSS, HD 46, BLACK EAGLE,** said this is a study resolution that deals with eminent domain. During the first period of this session there were four eminent domain bills in the House. Two that I heard in House Business dealt specifically with the Tongue River Railroad. The two we heard in Natural Resources dealt specifically with the Yellowstone pipeline. Those four bills tried to alter eminent domain statutes and are currently dead. There were many of us who thought these statutes are so important that altering a portion would alter the whole in a way we can't even comprehend. However, as we listened to testimony, there were people who came and testified from their heart and expressed a lot of fear.

The kinds of fear they expressed were when this right-of-way is abandoned, what is going to happen to my property and do I have any say? Another question was why individual property owners are treated differently than the state? The state only needs to grant an easement. Sometimes we are in a position where all the property is condemned. Another fear expressed was with technology changing, should we grant an easement for a particular purpose and could that easement be used for additional purposes. We may not be able to recover economically. Many of those things can be handled under current statute. However, there is a sense in the population that is not true. Eminent domain statutes go back to 1877. They were part of our territorial laws and the language has barely changed. The intent is that property with a compelling public interest can be condemned as a last resort. However, there has to be an attitude of the least private property damage.

This study will do three things. It checks to see if the current statutes respect the specific aspects of eminent domain as we know it. It also takes a look at any additional uses or changes that may be necessary and asks that the interim committee create statute or recommend statute that may address things that are either not as current or perhaps not comprehensive as they need to be. Those are the three things that would be looked at; the adequacy, the way they are implemented, and any particular recommendations. I have spoken primarily about private property owners and the kinds of things they said as they were coming to the hearings I participated in, but industry has an interest in this as well. Projects, particularly when a certificate of need has been granted, should be able to go through.

**Proponents' Testimony:**

**REP. SYLVIA BOOKOUT-REINIKE, HD 71, ALBERTON,** stated, my district includes the French Town and Huson valley through which the Yellowstone pipeline will be going. The water table there is six feet underground. Ranchers and everyone who lives in that area is extremely worried. I agree with everything that **REP. TUSS** said. I would like to add, one of the things that has come up is fiber optics. Currently, the Yellowstone pipeline would do eminent domain now and take a deed to a strip of land. They can turn around and lease to the fiber optics company, which is extremely profitable.

They would get \$40,000 a mile up front or \$5,000 a mile per year. Then the fiber optic's business is with the pipeline. Therefore, the fiber optics company could go in there and leave a mess. The private property owner is left totally helpless because the business deal is with the pipeline company. Something needs to be done to protect the private property owner. Why shouldn't they participate in the economic value of this? All these aspects need to be studied thoroughly so that no one is harmed. We can still support our industry and take care of the state as a whole.

**Aaron Browning, Northern Counties Resource Council,** read **EXHIBIT (sts75a01)**.

**Questions from Committee Members and Responses:**

**SEN. COLE** asked, have you made any recommendations of what committee you would like to put this in? **REP. TUSS** said, I originally thought Environmental Quality Council was the best place to put this study, primarily because it is composed of both legislative and public members. I think they have a history of being open, thoughtful, and considerate in the way they approach a study and in the recommendations that come out of that. The Speaker suggested that I ask for an appropriate interim committee. On Page 2, I have asked that regardless of what committee this goes to, I am asking that people from industry, the environment, private property owners, as well as both state and local government people are advised of those hearings so they can actively participate.

**Closing by Sponsor:**

**REP. TUSS** stated, I know when we approach something as comprehensive and long standing as eminent domain, there are both sides with dearly held beliefs and experiences. Often times we

hear from arenas where there is a core that is convinced something terrible is going to happen. That is balanced by the other side made up of people from the industry who feel their negotiations have gone smoothly and in anything they have done, they have never gone to condemnation. They have been able to do it through negotiations. Both property owners and people from the industry can cite on both sides of the equation with more citations than we have been able to do it through negotiation. However, based on the fact that there were four bills in the House and one in the Senate, this will not go away. If there is any place in the statute where it is not particularly clear, it has to do with the business with re-entry, abandonment, and reversion. If there is any place where modern life has taken us and where we need to be very clear, it has to do with multiple use of that easement. It is timely and I think it has your support. Thank you.

**DISCUSSION WITH THE COMMISSIONER OF POLITICAL PRACTICES**

***{Tape : 1; Side : A; Approx. Time Counter : 10: 24 - 10:38}***

**Linda Vaughey, Commissioner of Political Practices**, explained **EXHIBIT (sts75a02)**. About a month and a half ago, I held a goal setting session with our staff. One of the reasons I did it early was due to the fact that we were having a resignation almost immediately. A woman who had been with the office for almost eight years was retiring. We have another staff member leaving this summer. I wanted to be sure I got some ideas from them in terms of what we need to do to prepare ourselves for the next campaign cycle, which will be a rather busy one. What I passed out are draft goals and objectives for the agency for the next two years. There are a number of things we need to do just to get the baseline information available and ready to go to those who file. I would appreciate any input this committee might have over the next several months on anything you have found that we might be able to do better. We might be making information available to your treasurers and campaign workers and we would like input on anything that will make the rather complex rules under which we operate more clearly defined and accessed by those who have to work in the political arena. I would hope that you would feel free to call me with questions and suggestions at anytime.

**SEN. COLE** asked, does this include some of the major changes that are going to come out through some of the legislation that is going to be passed? **Ms. Vaughey** replied, nothing up to this point. There is a House bill that is going to require online reporting and I believe that there is going to be an attempt to

resurrect **HB 258**, which would be the funding mechanism. We have identified a way that we could develop online reporting. However, in talking to people who really know about this area that I am just learning about, I am getting precautions to proceed slowly. There are many ways to do this. We don't want to make any big expensive mistakes. Because of the sheer volume of paper we handle, it would be very difficult to get something up and running for the next campaign cycle. We are hoping we are going to be able to phase that in over time. Other states are doing it initially on a voluntary basis until everyone gets used to the electronic aspects of it. We have some foundational work to do. We need better database development and a web site. Hopefully we will be able to do that fairly easily within the next few years.

**SEN. COLE** asked, how many people do you employ over there? **Ms. Vaughey** replied there are four of us. **SEN. COLE** asked, two are leaving, correct? **Ms. Vaughey** said yes. We are redesigning some of the workload. One of those positions was a personal assistant to the Commissioner. I can write my own letters. What we need is someone who is really computer literate, can manage a database and do that development. We have all been entering data. We have one position empty that is not filled. I will probably use that on an occasional basis to pick up workload, like data entry. I think we can do it. The staff will be stretched, but they are always stretched. There is a lot of data manipulation that needs to take place and a lot of phone calls that need to be returned. The simple things that I can see to reduce that workload is redoing an accounting manual for the treasurer that is easy to follow. Those are the types of things we are going to try to do to manage with the staff we have.

**SEN. HARGROVE** takes chairman position.

#### HEARING ON SR 5

**Sponsor:** **SEN. MACK COLE, SD 4, HYSHAM**

**Proponents:** None

**Opponents:** None

#### Opening Statement by Sponsor:

**SEN. MACK COLE, SD 4, HYSHAM**, said this is our second list of board appointments coming from the Governor. It is explained fairly well here.

**Closing by Sponsor:**

**SEN. COLE** closes.

**SEN. COLE** retakes chairman position.

**DISCUSSION ON BOARD APPOINTMENTS**

**Susan Ames** stated, I sent up another list to the President of the Senate on Monday. The next question is, do you want more? We are cutting it pretty close. If we do have more it will not be many. There could be a few more in the next week or so.

**SEN. COLE** said we have to shut it off pretty soon. If there is a few more we may be able to get them in.

**David Niss** explained there is nothing in the statutes or in the rules that says when the process has to come to a close. It is a practical matter of forecasting whether the work can get done by this committee and the Senate rules can be followed in the time remaining. As far as what happens to those nominees for which action is not taken, the statutes are a little bit strange in that they say a nominee not approved by the Senate in effect has to be replaced by the Governor. but in the Senate Rules, Chapter 7, you have to read those statutes as saying a new appointee has to be made by the Governor only if this process is followed through with and no action is taken by the body based upon no action by the committee. I would say there is no danger to any of those appointees who are not acted on by the committee and therefore by the Senate, only because of the lack of time to do that work. If they are not acted on by this committee and by the body, they continue to be valid appointments and continue to do the work even though they are not approved by the Senate, unless they have been considered and rejected or considered and no action is taken.

**Ms. Ames** said you are probably only looking at a hand full, so it is not a big deal.

**SEN. COLE** stated, I wouldn't want to jeopardize a board member because we got half way through the process and we ran out of time, because we took action on them in committee and no action was taken on the floor.

**Ms. Ames** said I suppose they would just have to be picked up again next session.

**SEN. COLE** asked, any suggestions from the committee members?

**SEN. HARGROVE** said I have no idea when we are going to get through, but there is always a possibility of getting done a few days early. I would suggest taking one week from the scheduled end of the session and see what we can get approved by that time.

**Ms. Ames** asked, so you would like to cut it off at the end of this week?

**SEN. COLE** said, I think we had better end it this week.

*{Tape : 1; Side : A; Approx. Time Counter : 10:38 - 10:50}*

**EXECUTIVE ACTION ON HJ 34**

**Motion/Vote:** **SEN. TESTER** moved that **HJ 34 BE CONCURRED IN.**  
**Motion carried 5-0.**

**EXECUTIVE ACTION ON SR 5**

**Motion/Vote:** **SEN. WELLS** moved that **SR 5 DO PASS.** **Motion carried 5-0.**

**DISCUSSION**

A brief discussion was held concerning the committee dinner party. A current list of board appointments was handed out. The boards were divided amongst the committee.

**ADJOURNMENT**

Adjournment: 10:50 A.M.

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SEN. MACK COLE, Chairman

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KERI BURKHARDT, Secretary

MC/KB

**EXHIBIT (sts75aad)**