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

At the close of the Law and Justice Interim Committee's February discussion of eminent domain, staff was directed to develop draft legislation requiring a condemnee be provided with a statement of the condemnee's rights during an eminent domain action. The LJIC also asked that a letter be sent to the Environmental Quality Council (EQC) apprising the Council of the LJIC's request for draft legislation. Staff worked with Chairman Shockley on the letter to the EQC, and it was delivered during the EQC's March 7-8 meeting in Helena.

During the EQC's March meeting, the Council did not provide any formal feedback concerning the LJIC proposal. Chairman Keane, however, invited Council members to offer their personal feedback to the LJIC members.

Staff is including three documents along with this memo:

- **LClj11** -- a rough draft of the bill requested by the LJIC in February;
- **House Bill No. 420 as introduced** during the 2001 Legislature;
- **House Bill No. 420 as amended** by the House during the 2001 Legislature; and
- **Letter to the EQC** concerning LJIC's eminent domain work.

The LJIC draft was to be modeled after legislation brought before the 2001 Legislature and requirements in the North Dakota Century Code. Attached is a copy of the 2001 legislation, House Bill No. 420. The 2001 draft required a condemnor provide the information and it added the requirement to the facts necessary to be found before condemnation in 70-30-111, MCA. The 2001 draft also expanded instances in which a condemnee is entitled to attorney fees and defined "necessary expenses" and when those expenses accrue.

During the February LJIC meeting, committee members only requested legislation that would require a condemnee be provided with a statement of his or her rights in an eminent domain action. The LJIC did not indicate that the requirement should be incorporated into the facts necessary for condemnation. The LJIC also did not indicate what entity should provide the statement of rights, however, the 2001 legislation required a condemnor to make the disclosure, and staff used that legislation as a model.

As drafted, LClj11 requires the delivery of the statement of rights by certified mail to the condemnee. HB 420 contemplated the condemnor or the condemnee signing the statement of rights and having the statement recorded with the clerk and recorder. HB 420 was significantly amended as it made its way through the House in 2001. Staff incorporated the amendments into the draft for the LJIC. Committee members may wish to discuss that aspect of the draft and provide additional direction to staff on how best to proceed with the drafting of LClj11.

Staff also completed a legislative history for HB 420. The bill was not a request made by the Environmental Quality Council based on their study of eminent domain during the 1999-2000 interim. According to committee meeting minutes, the EQC discussed the concept but instead agreed to develop the eminent domain handbook. LJIC members were provided with an updated copy of that handbook in advance of the February meeting. Chairman Shockley was on the eminent domain subcommittee that studied the issue in 1999-2000, and Chairman Shockley brought the legislation forward in 2001. The bill passed the House and was tabled in the Senate Natural Resources committee.

The North Dakota Century Code doesn't specifically reference a landowner bill of rights. However, 54-12-01.1 of the North Dakota Century Code requires the Attorney General's Office to prepare pamphlets describing eminent domain laws. Copies of the pamphlets must be available to all condemnors who are "charged a price for the pamphlets sufficient to recover the costs of production." A condemnor is required to present the pamphlet to a property owner prior to making an offer to purchase and initiating a condemnation action. The North Dakota Attorney General's Office publishes several pieces of information, including the "Landowner Rights under North Dakota's Eminent Domain Law". The fact sheet describes how state agencies, local governments, and some private entities use the condemnation process in North Dakota. The information is also posted on the Attorney General's website.

Wyoming doesn't require a bill of rights, but it does require written notice outlining a condemnees' rights. Wyoming Statutes Annotated 1-26-509 require: "a written notice that the condmnee is under no obligation to accept the initial written offer but if the condemnee fails to respond to the initial written offer the right to object to the good faith of the condemnor may be waived, that the condemnor and the condemnee are obligated to negotiate in good faith for the purchase of the property sought, that formal legal proceedings may be initiated if negotiations fail and that the condemnee has a right to seek advice from an attorney, real estate appraiser, or any other person of his choice during the negotiations and any subsequent legal proceedings."

Texas requires a landowner bill of rights in eminent domain proceedings. The Texas Government Code, Sec. 402.031. directs the Texas Attorney General to prepare a written statement that includes a bill of rights for a property owner whose real property may be acquired by a governmental or private entity through the use of the entity's eminent domain authority under Chapter 21, Property Code. The statement must inform a property owner of his or her right to:

- notice of the proposed acquisition of the owner's property;
- a bona fide good faith effort to negotiate by the entity proposing to acquire the property;
- an assessment of damages to the owner that will result from the taking of the property;
- a hearing under Chapter 21, Property Code, including a hearing on the assessment of damages; and

- an appeal of a judgment in a condemnation proceeding, including an appeal of an assessment of damages.

The Attorney General's Office is directed to write the statement in "plain language" and make the information available on the Attorney General's Website. The statement must include the title, "Landowner's Bill of Rights" and a description of:

- the condemnation procedure provided by Chapter 21, Property Code;
- the condemning entity's obligations to the property owner; and
- the property owner's options during a condemnation, including the property owner's right to object to and appeal an amount of damages awarded.

Texas eminent domain law requires a condemnor to provide the statement to a condemnee not later than the seventh day before the date a governmental or private entity with eminent domain authority makes a final offer to a property owner to acquire real property.

As the LJIC reviews the requested draft, it may be useful for committee members to discuss and consider:

- Should a state entity be required to develop the information? If so, how should the cost be addressed?
- Should the statement of rights requirement be incorporated into 70-30-111, MCA?
- Should the requirements for inclusion in the statement of rights be further developed?
- Should requirements for signing the statement or filing it with the clerk and recorder be included?
- When in the process should the information be provided?
- Should the entities be referred to as condemnors and condemnees or agents and property owners?
- Should a condemnee be able to waive the 30 day waiting period?
- What additional changes should be made in the draft?

Staff will be seeking direction on how best to proceed on the draft. I look forward to working with you. Please feel free to contact me any time.

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