

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE  
April 2, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 a.m. in Room 437 of the Capitol by Chairman Kerry Keyser. The following members were absent: Rep. Bennett, Rep. Iverson, Rep. Daily, and Rep. Keedy. Jim Lear, Legislative Council, was present.

SENATE JOINT RESOLUTION 30 SENATOR AKLESTAD, sponsor, stated this resolution is to request an interim study of delays of appeals in criminal cases. This will strengthen the appellate system and eliminate the loopholes. The filing of briefs is an abuse to the system when it is used to appeal cases many times over. Usually briefs are 30-40 pages long. One particular brief SENATOR AKLESTAD knew of was 700 pages. This is ridiculous and something should be accomplished to stop this. There is abuse in workman's compensation cases.

The Duncan MacKenzie case is a prime example of abuse of the appellate court. MacKenzie committed the offense in January, 1974 and was convicted in February, 1975. The case has been appealed to the Montana Supreme Court three times and to the United States Supreme Court three times. Various appeals have been in between. This could take just as long going to federal court. MacKenzie could die of old age before this is over with. EXHIBIT 1.

JEAN TURNAGE, Senator from District 13, was in favor of the bill. This situation has not gone unnoticed. The chief justice of the United States Supreme Court pointed out some thought has to be given to appellate courts. In the MacKenzie case many extraordinary petitions have been brought up several times. The appeal process should not be eliminated but the parties should be required to place their entire concern in as few appeals as possible. This resolution will not cure all the problems but it will address the situation.

JOHN MAYNARD, Attorney General's Office, was in support of the bill. MAYNARD stated the House Judiciary Committee had passed a post-conviction relief bill to clarify that all post-conviction relief should be done at once. This resolution is broader in that it would encompass the entire appeal process. This would clarify legislation and act as a source of information so that the concerns expressed would be addressed and understood.

There were no further proponents.

There were no opponents.

In closing, SENATOR AKLESTAD gave the committee two letters he received from concerned citizens. EXHIBIT 2 and 3. This is not

through the federal courts yet. This resolution will not effect back cases but it will pertain to future cases. People in the communities feel the right to appeal should not be taken away but the abuse should. This will be a small step in that direction.

REP. CONN asked if the purpose to appeal is to delay. SENATOR TURNAGE replied yes, it benefits the criminal.

REP. TEAGUE asked about errors made in lower courts. SENATOR TURNAGE responded the purpose of the appellate court is to correct an error in the lower courts. Many times, however, it is a delaying tactic without merit. REP. MATSKO stated in using these kinds of ploys they will generally take one issue and appeal it all the way to the top and then start over with another one. SENATOR TURNAGE agreed.

REP. EUDAILY asked why include federal courts. SENATOR AKLESTAD stated that information will be referred to federal courts. They are interested in this also. Our information will have benefit to show the states are willing to do this. The state would probably get federal cooperation. If enough states did this it might change at the federal level.

REP. ANDERSON noted the bill primarily addresses the delaying action of just criminal cases. What about civil cases? SENATOR TURNAGE replied the supreme court has slapped hands of attorneys who frivolously appeal in civil matters, but not in criminal cases. There is less abuse in civil cases.

HOUSE JOINT RESOLUTION 64 REP. JACOBSEN, sponsor, stated this resolution is to request an interim study of all aspects of Montana's laws relating to eminent domain. There have been several bills dealing with eminent domain during this session and there are many laws on the subject. This would direct a study to coordinate the laws. EXHIBIT 4, amendments, was handed out to the committee.

REP. DAN KEMMIS stated this bill is in response to a bill that failed earlier in the session concerning eminent domain. A study of the range might change the abuse. The entire area of law needs to be addressed, which is what this resolution will do.

MIKE ZIMMERMAN, Montana Power Company, felt the study would be useful. There is much intensity with eminent domain. This study will be valuable for future sessions.

STEVE DOHERTY, Northern Plains Research Council, supported the bill as he felt it was long overdue. Taking by a private entity of private property for what is deemed a public good is a liberal

interpretation. He whole heartedly endorses the bill.

PAT UNDERWOOD, Montana Farm Bureau, was in favor of the bill.  
EXHIBIT 5.

DON ALLEN, Montana Petroleum Association, was in support. Many questions, however, need to be answered. ALLEN has been involved with communicating between oil and gas companies and the landowner. The public's good is not being considered by the business people involved with eminent domain. ALLEN stated some of the facts in his files reveal the landowners were interested in only one thing when it came to eminent domain, that being money. There must be a balanced look at this. Eminent domain is a serious question. ALLEN stressed he was in favor of the study but felt all aspects need to be looked at in a balanced way. There should not be a judge-jury situation. ALLEN approved of the amendments.

REP. DAVE BROWN, representing District 83, was in support of the resolution.

There were no further proponents.

There were no opponents.

In closing, REP. JACOBSEN stated all parties interest should have their input. This would have uniformity that everyone could live with and be treated equally. It was suggested an additional amendment to strike on line 25, page 1 "for their own profits".

REP. TEAGUE asked if ALLEN had appropriate language that would make him comfortable with the bill. ALLEN replied the highest and best use of the land is hard to determine. The committee that studies this needs to be balanced. REP. TEAGUE asked about page 1, lines 9-11. The sponsor stated there is not enough uniformity. By making a recommendation to the next legislature it could eliminate some of the problems. Hopefully the committee would come up with something the people could live with by the study.

REP. TEAGUE asked if the sponsor felt it would have a chance to be selected as one of the studies to be performed. The sponsor replied it should be number one priority.

REP. ANDERSON asked if any consideration were given to the study of reservation rights. The sponsor replied that is under federal jurisdiction, although the tribes usually cooperate in this type of study.

DOHERTY stated the eastern states for some reason have taken a conservative view. Eminent domain is taken from public party for private use. Western states define what a public use is. The resolution addresses what is a public use.

EXECUTIVE SESSION

HOUSE JOINT RESOLUTION 64 REP. CONN moved do pass.

REP. BROWN moved to adopt the amendments as proposed as he felt the amendments would make the bill better.

JIM LEAR recommended the committee change amendment 7 by deleting "strike and remainder of (8)" and, instead, striking after the word "instances". REP. BROWN added the recommendation to his motion to adopt the amendments. JIM LEAR explained to the committee that striking the above would not make sense.

REP. ANDERSON was concerned about the reservations and private land. It is possible that through eminent domain something would have to go through the reservations. REP. ANDERSON hoped the committee that does this study would look into this. REP. BROWN felt it was broad enough that it would encompass this. The state and federal government do not have control over reservation land. REP. ANDERSON felt there would be a problem with land that is adjacent to the reservations.

The amendments proposed by REP. BROWN passed unanimously.

REP. TEAGUE moved on page 3, line 9 to strike "increase in". He felt this was a negative factor in this area. Without those words the bill would be better.

REP. CONN stated she felt the material should not be deleted because operating costs would cause problems. REP. BROWN stated if a federal highway crosses farm land the cost of time going around it is increased. REP. BROWN felt the wording should be left in. It is an increase in operating cost that is not taken into account. REP. SHELDEN agreed that the wording keeps it clear.

REP. TEAGUE stated operating cost incurred would consider all those factors, increases, inconveniences, and nonmaintenance.

REP. BROWN stated it does not account for differentiating circumstances.

REP. TEAGUE withdrew his motion.

REP. CONN moved do pass as amended.

Judiciary Committee  
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REP. SHELDEN hoped it would be possible to do the study with appropriate funding. The problem arises because there are still some companies who have not fully accepted their responsibility concerning eminent domain. It might be necessary for the interim committee to look at some of the companies.

REP. BROWN stated there are dozens of different statutes about the subject and that he hoped the study would look at them all.

The motion of do pass as amended carried unanimously.

SENATE JOINT RESOLUTION 30 REP. MATSKO moved do pass. He felt this was long overdue.

REP. YARDLEY supported the motion. The United States Supreme Court has been very indecisive. It is hard for lawyers and justices to decide what is constitutional and what is not constitutional.

The motion of do pass carried unanimously. REP. MATSKO was assigned to carry the resolution on the House Floor.

The meeting adjourned at 9:05 a.m.

  
KERRY KEYSER, CHAIRMAN

mr

I think it is high time we quit making a mockery of the people and the judicial system in this country. A prime example of this is the [redacted] and [redacted] County. [redacted] MacKenzie committed these crimes in January of [redacted] and was first convicted in February of [redacted]. I to manipulation and interpretation of the law, this has dragged on with no end in sight.

I have been following this case for quite some time, and during the last legislative session I was assured that it was going to come to a head, and MacKenzie would pay for his actions. Unfortunately, this hasn't happened and the abuses of our judicial system continue, not to mention the expense Pondera County and the state.

I understand that appointed legal counsel has an obligation to his profession and client, but in this case that obligation has long been exhausted. To dramatize this point, let me note that the attorneys for MacKenzie have appealed his case to the extreme.

Following is information obtained from the Attorney General's office:

State vs. McKenzie

Date of Offense	1-21-74
Date of Conviction-District Court Jury Trial	2-01-75
Appeal submitted following argument before Montana Supreme Court	9-03-76
Decision issued	11-12-76
Rehearing denied	1-10-77
Judgment vacated and care remanded by United States Supreme Court	6-27-77
Case re-submitted following argument before Montana Supreme Court	3-13-78
Decision issued	6-07-78
Rehearing denied	7-25-78
Judgment vacated and case remanded by United States Supreme Court	6-25-79
Case re-submitted following argument before Montana Supreme Court	10-29-79
Decision issued	2-26-80
Rehearing denied	3-31-80
Certiorari denied by United States Supreme Court	12-08-80
He filed for Post-conviction Relief	1-07-81
Was Denied	2-27-81
Appealed to the State Supreme Court	3-03-81

This is where the case stands at this time.

16 Actions  
Fed Courts

AT This Time Pondera County \$ 149,000.00

There must be an effort made to eliminate the loopholes in the appeals process, and to limit the number of appeals the taxpayers must pay for. This is a legal matter and, not being a lawyer, it will be difficult to get to the core of the problem. But it will not be impossible.

It appears to me that an appeal in a Criminal case should include all legal issues that are properly to be considered, and that they be considered in one all-encompassing appeal and not in multiple separate appeals that drag on forever.

At this time I invite anyone within the legal profession to work with me to plug those loopholes in the laws pertaining to appeals. My first effort will be to introduce a resolution addressing the present manner in which appeals after convictions are handled, and ask for an interim study of the appeal system. Although I question interim studies, it may be that this is the only way to bring this serious problem not only to the attention of the legislature, but also to the general public. I have been in contact with the Attorney General's office and will be talking with judges who are interested in tightening up the laws. I think it will take the support of all Montanans in this case to change the laws pertaining to the appeals system, and I invite your support at this time.





Name

Address

<u>Name</u>	<u>Address</u>
Estella C. Letson	#403. Horizon Lodge - Conrad 977 mt 59425
Oscar Berland	Horizon Lodge Room 404
Minnie Berland	Horizon Lodge Room 404
Ethel T. Seferl	Horizon Lodge Room 504 "
Alice M. Fockler	Horizon Lodge Room 205 "
David Nos	Horizon Lodge 310
Jesse Shay	Horizon Lodge 411 <sup>A</sup>
Arne Baumgardner	Horizon Lodge - 312
Lottie Thomas	" " 151
Katherine N. Tracy	Horizon Lodge Room 202
Hena Berland	Horizon Lodge Room 214
Alba Miles	Horizon Lodge Room 309
Leo Tier	Horizon Lodge 311
Maria Kimentogon	1000 4 <sup>th</sup> S W. Conrad Mt.
Elvira Whealy	Conrad
Shady M. Poweroy	Conrad, Mont 312
Louise - Jun golding	Horizon Lodge 206
Barbara Wolvert	Conrad Mont.
Palma Coldwell	conrad, mt 59425

Conrad, Montana  
March 24th, 1981

Senator Gary Aklestad  
Montana State Capitol  
Helena, Montana 59601

Dear Senator Aklestad:

We the undersigned people wish to support your efforts to plug the loop holes to limit the number of appeals that the tax payer must pay for as reported in the Independent-Observer issue March 19, 1981 under the title "It's time to quit making a mockery of McKenzie case". Anything you can do to end this inequity will be greatly appreciated.

NAME

ADDRESS

	Rt 1 Box 12 Conrad 59425
William W. Beach	Conrad - H. Lodge 59425
Sam Emerson	Conrad. H. Lodge 59425
Blanche Moritz	Conrad H. Lodge - 59425
Mike Moritz	" " " " " " "
Poctor Donnie E. Brad	" Box 457 "
Simon F. Higg	" " " 59425
Clyde Bellamy	" " " "
Alice Venetz	" 408 So. Del. 59425
Norma Keel	" 701 S Del 59425
Vernon Venetz	" 408 So Del 59425
Dorothy Flaadstol	" 511 S. Del. 59425
Verna Messenger	Box 773 Conrad Mont.
Violet Belling	" 137 N. Maryland, Conrad
Lucille Mortensen	519 - So. Helaware
Oscar Mortensen	519 - So. Helaware
P. Strandberg	506 " " "
Evelyn Strandberg	506 " " "
Helena Donohue	404 So. Iowa, Conrad, 59425
Wendie Erick	Horizon Idg Conrad
Blaise Poweroy	Horizon Idg Conrad
Rita Wittmer	Horizon Idg Conrad
Eva	Horizon Idg Conrad
	Horizon Idg Conrad
	Horizon Idg Conrad
	Horizon Idg Conrad
	Horizon Idg Conrad

Wallace Berg Horizon Lodge Council, M  
Theresa M. Kautz " " " " "  
Steven Sill " " " " "  
Audine - nerson " " " " "

Opal Miller " " " " "  
Mrs. McClain Horizon Lodge Council M  
Nancy Susidit 16 No. Maryland Council M  
Mrs. Tandy Horizon Lodge Council M

Betty Kaymer Horizon Lodge #41, Council M  
Robert A. ... Route 3 ...  
... Star Pt. Boy 225 Council

Anna Ranney  
Glean P. Kautz Horizon Lodge #13 "  
Tom Perry 404 S. ... Council

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HOUSE JOINT RESOLUTION 64

1. Amend page 1, line 17.  
Following: "about"  
Insert: "the appropriate balance between necessary public uses and"
2. Amend page 1, line 24.  
Following: "with"  
Strike: "agricultural"  
Insert: "private property"
3. Amend page 1, line 25, and page 2, line 1.  
Following: "domain"  
Strike: "for their own profit"
4. Amend page 2, line 6.  
Following: "landowners"  
Insert: "and condemners"
5. Amend page 2, line 7.  
Following: "of"  
Strike: "their"
6. Amend page 2, line 16.  
Following: "use"  
Strike: the remainder of (1)  
Insert: ";
7. Amend page 3, line 5.  
Following: "limiting"  
Strike the remainder of (8)  
Insert: ", expanding, or eliminating"
8. Amend page 3, line 17.  
Following: "domain"  
Strike: "and"  
Insert: ", "
9. Amend page 3, line 17.  
Following: "Act"  
Strike: " ;"  
Insert: ", and the Montana Major Facility Siting Act ;"

WITNESS STATEMENT

NAME PAT Underwood BILL No. HJR 64

ADDRESS P.O. Box 1207 Bozeman, MT. DATE 2 APR 81

WHOM DO YOU REPRESENT Montana Farm Bureau

SUPPORT  OPPOSE  AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Montana Farm Bureau supports HJR 64  
we desire to see laws on eminent  
domain that clearly define all  
rights of private property owners.  
This study may lead to meaningful  
legislation in this area. we  
recommend a Do Pass

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

BILL SJR 30

Date 4/2/81

SPONSOR AKLESTAD

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
<i>John Maynard</i>	<i>Room 225 State Capitol</i>	<i>Attorney General</i>	<input checked="" type="checkbox"/>	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE \_\_\_\_\_ JUDICIARY \_\_\_\_\_ COMMITTEE \_\_\_\_\_

BILL HJR 64

Date 4/2/81

SPONSOR JACOBSEN

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
J Beck	2701 Prospect	Dept of Hygiene	-	-
Tom Denton	365 N. Mountain	Med. R. E. Assoc.	-	-
Michael Zimmerman	655 E. Boulder Blvd.	Law	✓	
Steve Doherty	10027 Madison	N. P. R. C.	X	
Ed Kulevsk	10000 Canyon	Plant Farm Assoc.	✓	
Tom Allen	Highway 110	Med. D. P. Assoc.	✓	
Gene Brown	10011 Silver Spring	Gen. - Dentist S.S.	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.  
 PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.