MINUTES OF THE JUDICIARY COMMITTEE
April 5, 1983

The meeting of the House Judiciary Committee was called to order by Chairman Dave Brown in room 224A of the capitol building, Helena, Montana at 9:03 a.m. All members were present with the exception of Representative Seifert. Brenda Desmond, Staff Attorney for the Legislative Council, was also present.

HOUSE BILL 825

CHAIRMAN BROWN advised the committee that this bill was sent to this committee by motion of the House so that they can consider the Senate amendments to same. He stated that, as he understood the procedure, this bill should be treated like any other bill sent by motion from the floor; he would need a motion to concur or not concur in the Senate amendments; action should be taken; and then it should be reported back to the floor, setting out the committee's recommendation.

REPRESENTATIVE IVERSON moved TO CONCUR IN THE SENATE AMENDMENTS. The motion was seconded by REPRESENTATIVE FARRIS.

MS. DESMOND gave an outline of the amendments and what they appear to do. She said that in amendment #1, the term "interest" is broader than the term "license" and is, therefore, more precise; in amendment #2, this specifies that the standard of proof is "preponderance of evidence" and this will reorganize the section to make it clear that a showing of public interest underlies the condemnor's case; in amendment #3, it eliminates the word "reasonable" to avoid litigation on reasonableness in the initial stage of the proceeding, because this issue is appropriate for the second phase of proceedings.

REPRESENTATIVE ADDY interjected that he thought "reasonable" was eliminated because Chairman Turnage thought it was redundant and a standard of reasonableness was implied. MS. DESMOND agreed.

MS. DESMOND continued that amendment #4 was changed to conform with amendment #2; amendment #5 clarifies that the burden of proof is on the condemnor, not the condemnee

and to avoid unneccessary delay by putting in a six-month deadline unless the court shortens or lengthens that time for good cause; the amendment #6, which is on page 8, line 10, gives more specific legal language; amendment #7, which is on page 8, line 15, ties this in with amendment #2; amendment #8 is on page 9, line 21, subsection 4, and is similar to amendment #5 and shows that condemnation matters shall be expedited whenever possible; amendment #9, which is on page 14, line 22, is to conform with amendments to 70-30-207, (Section 7); amendment #10, page 15, lines 9 through 15, subsection 2, is to prevent delay in the condemnation proceedings, it requires that if the condemnor takes possession, he must make prompt payment to the condemnee, and provides that when the claimant does file statement of just compensation that payment by the condemnor must be made within ten days.

CHAIRMAN BROWN advised that, since this is a bit of an unusual procedure, they will ask anyone that wants to comment on the Senate amendments to the bill to do so as specifically as possible.

REPRESENTATIVE RAMIREZ commented that, in going through these amendments, there are some specific things he would like to have comments on.

CHAIRMAN BROWN suggested that they have questions from the committee and, if they run out of questions and anyone wants to add anything additional, they can do so at that time.

REPRESENTATIVE RAMIREZ said he would like this question addressed by everybody on both sides of the issue; i.e. on page 5, they are extending the period of time quite markedly over what it is today if he understands this amendment correctly; the only issue to be determined in this first hearing are the issues set forth on page 4, lines 9 through 14 which read "(1) that the use to which it is to be applied is a use authorized by law; (2) that the taking is necessary to such use;" and subsection (3) is applicable only if the property is already appropriated to some other public use; once that is determined, then

you have a whole separate proceeding basis to determine the amount of compensation so the issues are really pretty limited in the first hearing and you have to be fair to both sides; and he felt the present law does not give the landowner enough time to adequately respond so there does seem to be a need for an extension of time, but he felt that six months seems to be fairly lengthy for the deteramination of just those two issues, when, in some of these projects, time can mean an awful lot in cost and whether the project is even feasible. He asked that this question be addressed.

JIM BECK, Administrator of the Legal Division of the Department of Highways, advised the committee that the idea behind this was, not necessarily to lengthen the time to six months, but to avoid any time constraints up to six months, so, instead of under the old procedure of having to have show cause hearings at the time of the issuance of the complaint, there would be an answer filed on the question of necessity. He stated that, if there was a contest over the issue of necessity, then, it would be his feeling, that the condemning party would move to set the hearing at a time convenient to him; if that was not convenient or acceptable to the party who wanted to get the time changed, the outside time frame is six months so it is conceivable that they do not have to wait for six months to get this done.

REPRESENTATIVE RAMIREZ indicated that it seems to him, based on his practice of law, that when it says within six months, everyone is going to try and get the full six months; and even though they say that this is a maximum, you are establishing what the standard will be - everybody is going to say that they need six months to get ready for this - not everybody but most of them.

MR. BECK replied that he generally recognizes that this could be a potential problem, but he did not visualize this as causing too many problems, but maybe, some of the others would like to speak to this matter.

REPRESENTATIVE ADDY noted that just about anybody could get six months anyway if they wanted to.

WARD SHANAHAN, representing the Norther Tier Pipeline Company, exclaimed that this language is pretty much of a compromise that was worked out in the Senate Judiciary Committee with the Northern Plains Resource Council and the industry representatives. He noted that the only thing that still troubled him was that on line 15, he would feel much more comfortable, if there was a semi-colon after the word "answer", because he wanted it to be plain that the answer should be filed by the time required by the Rules of Civil Procedure and not within six months. He indicated that this was normally within twenty days, but the court can extend that for good cause; then, of course, the six months will apply to getting to the factual issue of necessity. He said that he did not intend to back off from the compromise as he agreed to six months, but he thought that semi-colon should be in there.

REPRESENTATIVE ADDY said there is a period in there now, is there not. MR. SHANAHAN replied that there is a comma. It was noted that this is a period. He said if it is a period, that is fine.

JAMES PATTEN, representing the Northern Plains Resource Council, pointed out that the court can enlarge or shorten the time for good cause shown; he is certain that the condemnor needs to expedite the hearing and they need to bring the matter before the judge and the judge can decide if that shorter time is justified.

REPRESENTATIVE RAMIREZ asked if he thought that would be that easy to do - as a practical matter, they are not going to be able to go in there and just have their own way; the other side, if it is really a contested matter is going to be fighting tooth and nail; good cause is a term that is a little vague and it depends a great deal on just how the judge perceives the situation. He felt that on a hotly contested matter, it is not going to be that automatic.

MR. PATTEN replied that it seems to him if the condemnor knows that he is going to be condemning that that gives

him plenty of time to anticipate the problems.

MR. BECK stated that it has been his experience that, if the landowner wants the time, the judge is going to give it to him in any event, so he did not think, from the Department of Highways' viewpoint, that they are giving away anything or creating any problem that they do not face right now. He commented that he has yet to see a landowner come in and ask for a time extension and not get it.

REPRESENTATIVE DAILY indicated that when you take the Northern Plains Resource Council and the Northern Tier Pipeline Company and they seem to compromise on everything, it would seem to him that they are not doing anything and he doesn't see the need for the bill at this point. He thought maybe they should just kill the bill and let it go the way it was.

REPRESENTATIVE ADDY noted that they had a couple of condemned landowners here and maybe they could shed some light on this.

REPRESENTATIVE DAILY asked if anyone has benefited from this other than the Northern Plain Resource Council.

MR. PATTEN said that he felt it was important to incorporate the Rules of Civil Procedure in this; it gives all parties the same rights they would have in any other litigation and he did not think it was really equitable that the landowner was put through a great disadvantage in a condemnation suit. He felt he should have all the same rights as a defendant in any other lawsuit; this is the main thrust of the bill - to put a condemned landowner in parody with any other defendant in any lawsuit.

MR. SHANAHAN testified that he has tried cases for both the condemnor and the condemnee; he understands that the original language is what you see on page 5, lines 9 through 13; this language was taken out of a section which this bill strikes and reinserted at that point

because it involves taking the question of necessity to the judge. He explained that the historical reason for this is that this is an exercize in the sovereignty of the state; under our law, the state owns all the property; we merely hold property subject to the will of the sovereign; when a right is lent to a company like Northern Tier Pipeline, the state has recognized in the law that the right to build pipelines is a necessary use for the public good; and, therefore, they lend the power of eminent domain to exercize in order to get the property in order to build the pipeline. He noted on page 4, line 9, it states "that the use to which it is to be applied is a use authorized by law" and those uses are something the legislators recognize as a proper exercize of sovereign power of the state. He contended that if our company did not organize and build this particular facility, the state would have to do this itself in order to get a supply of crude oil. He indicated that the reason that show cause hearing was in there originally (it has been in the law for a hundred years) is that it was purely a question of law as to what the use was in the necessity for the taking. He said that what you are doing with this change is that you are raising the question that, under the rules of Civil Procedure, a person could demand a jury trial on the question of whether the property was necessary to the use; if that is the case, then you are extending the time that it will take in order to get this property, because if the jury decides contrary to the legislature that the taking is not necessary, then, essentially, the project is stopped. He noted that, up to this time, the question of good cause was merely coming forward to show why the engineering decision to build the pipeline, highway, etc. was not in accord with a reasonable engineering necessity - that is what the rule is right now. He thought, when you adopt this language, you raise the question of a jury deciding something else.

JO BRUNNER, representing Montana Women Involved in Farm Economics, stated that as far as agriculture is concerned, this is quite beneficial to us in her belief;

she has never been involved in anything like this, but lives close to land that has had numerous electric power lines that go side by side by side taking tremendous amounts of land that you cannot crop because you have all those poles going through it. She contended that this would put the burden of proof for the need of that on someone else instead of them proving that the need isn't there, they would have to prove that the need is there.

BOB TULLY, representing the Northern Plain Resource Council and a rancher from Roundup, affirmed that this is not a narrow piece of legislation; it is not special interest legislation in any way, shape or form, unless you deem the interest of every property owner in the state of Montana as being restrained or narrow; and he submits that that is quite broad. He stated that it was brought out in the Senate Judiciary Committee that there was a need for and a desirability to change the adjustment of the condemnatory procedures in the state and there were no opponents to this bill - all spoke in favor of the bill. He indicated that there was a difference of opinion to degree of change, the language, etc., but there was no question, in anyone's mind apparently, but what the bill was necessary and advisable. He stated that the list was as long as your arm of those who were supporting this legislation and a number of them appeared asking that the legislature update our eminent domain proceedings.

ANN CHARTER, a member of the Bull Mountain Association and the Northern Plains Resource Council, explained that they were threatened by condemnation around 1970; at that time, they had a meeting and the county attorney told them what their rights were; he told them that they had no rights and they better take what the coal companies offer, which was $1.00 an acre on the lease and a 1 cent royalty on the coal; he told them they would get more from their offer than going through the

courts; this made them so mad that Mr. Tully and she went out and started the Bull Mountain Landowners' Association, which later became the Northern Plains Resource Council; and she said they were mad at him because they did not feel that they were being given the right advice; but on looking back, she thought that he was absolutely right - if they had gone to court they would have come out with nothing. She continued that, since then, they have gone through condemnation by the power company; out of the legion number of landowners that were condemned, there were three of them that had guts enough to go to court; a lot of the time during the seven years that this was in litigation, they wished they had been among the gutless because it is a very difficult thing for a layman to go through; but, as it proved out, the result of the whole thing was that they were given just compensation and it was so far above their offer, that there was absolutely no comparison. She pointed out that their desire is for equal status and she felt the law, as it now stands with all the thought and the work that has gone into it, will benefit; it is not perfect; they may be back later; they may not have heard the end of them; but the way it stands now is beneficial; and they are patient and are willing to take what they can get. She said that she just has a gut-feeling, knowing nothing about the judicial area, and from past experience, she has a feeling that even if you were to try to improve this bill at this point, that you could end up killing it by tampering with it; and if you want to kill it, that would be the way to do it. She testified that this is a good bill and they would like to see it stand the way it is.

CHAIRMAN BROWN pointed out that sixteen of them sitting at this table are not lawyers and this may be a strength.

REPRESENTATIVE HANNAH stated that this bill is designed to put this kind of litigation under the Rules of Civil Procedure according to Mr. Patten's testimony and he asked if that says that in here. MR. PATTEN replied

that he did not think that it specifically says that in the bill, but the Rules of Civil Procedure would apply automatically unless the statute provides otherwise.

REPRESENTATIVE HANNAH asked how this was different from the present law. MR. PATTEN responded that the present law applies different time frames.

REPRESENTATIVE HANNAH asked if those time frames are shorter or longer - how do they compare. MR. PATTEN replied that the present law requires the defendant to appear within fifteen days after service, he thought, and the Rules of Civil Procedure allows twenty days; the Rules of Civil Procedure provides for discovery; and he thought the present law requires the defendant to appear in that fifteen days and basically be prepared to put his whole case forward within that fifteen days. He noted that the Rules of Civil Procedure do not require such expeditious preparation of the defense.

REPRESENTATIVE HANNAH asked if this allows a jury trial. MR. PATTEN answered that he did not understand Mr. Shanahan's argument as to how the bill will interject juries; the bill adds public interest requires the taking and he did not understand this argument.

MR. SHANAHAN stated that if you look in the bill, you will see that you have striken the word "judge" and replaced it with "court" throughout.

REPRESENTATIVE ADDY said that he thought this was done in the House.

MR. SHANAHAN said that the language from the House "order to show cause hearing" was left in there, which is a type of remedy that is usually used in equitable remedies like an injunction, etc., wherein a court proceeds immediately to hear the facts. He continued that you strike all that out of there and you replace that with the requirement that the Montana Rules of Civil

Procedure are applicable; and in these rules, it provides that in all cases where there is a question of fact to be decided, a jury trial can be demanded.

REPRESENTATIVE HANNAH asked if the industry people were aware of this when this came out of the Senate. MR. SHANAHAN responded that he was aware of it; you folks are the ones that hold the power; when he was in front of the Senate Judiciary Committee, they told him that unless he compromised with the Northern Plains Resource Council, they were going to strike the order to show cause hearing altogether and he contended that it would take him two years to get a decision on a question of necessity, so he compromised for six months.

REPRESENTATIVE RAMIREZ noted that the present law now says "the court or judge" and he believes that all the bill does is stike "or judge". He said that the court could be the judge or jury and he did not see what difference it would make by striking "or judge".

REPRESENTATIVE HANNAH wondered who determines whether it will be the court or the judge under the present law. REPRESENTATIVE RAMIREZ replied that, under Montana law, either party can request a jury.

REPRESENTATIVE HANNAH said that right now under Montana law, the landowner could go in and request a jury under this particular portion. REPRESENTATIVE RAMIREZ responded that he did not think he could demand a jury except on , but you can always get a jury on damages.

REPRESENTATIVE HANNAH asked if he would agree that this bill allows him to request a jury on the necessity question. MR. PATTEN replied that he thought he would agree with that.

REPRESENTATIVE RAMIREZ said that, if we now have a jury determination on necessity as Mr. Shanahan claims, what would happen then if you have different necessity hearings in different counties and had different jury

verdicts on necessity. MR. SHANNAHAN responded that this is his principle problem - he was faced with a choice of having no accelerated provision at all or this six-month period by the Senate Judiciary Committee. He contended that he is still concerned about the question of a jury trial on the issue of necessity; right now it is a legal issue to be determined by the judge; he has 435 miles of pipeline to condemn; if Lewis and Clark County decides differently from Broadwater County, he cannot build that pipeline until he has the last inch; so he is going to be subject to a jury trial all the way across the state; and that is a real concern.

REPRESENTATIVE SPAETH asked how does this differ from having a judge decide all the way across the state - is that a different situation, as there are different judges making these decisions. MR. SHANAHAN said, in his experience, it takes longer with a jury; a district judge has general jurisdiction in the state of Montana; once a district judge has decided that the issue of necessity has been proved, he thought it became a simple matter to have that question certified and to have it become binding upon all the other district judges. He did not feel that this was necessarily so when you are faced with a jury. He indicated that when you are condemning this is not a pleasant proceeding, but it is a necessary proceeding. He felt that you can build a piece of highway in one county and not worry about the piece of highway in the next county for this year, but he cannot do anything until he gets the entire right-of-way.

MR. BECK indicated that you cannot build a piece of highway in one county; you don't condemn the whole stretch of highway; you condemn the individual landowners and, if you got into the situation of a jury trial on the issue of necessity, you never know what a jury is going to do. He said that if you had your project planned and there were 150 parcels on this project; you go along and you have everybody but one; for some particular reason, the jury feels strongly

that you should not have necessity on one parcel; it could even be emotional reasons; and then everything goes kapooey. He felt that by having the judge do it, you have someone who is trained in the law; conceivably who will look at the precise question to be decided for the elements that are stated in here, who will make his decision based on the facts and not on whether he was a friend of the landowner, whether his mother has been condemned or some piece of evidence that is extraneous to the proceeding. He thought that if you have juries on the question of necessity, you are going to stop highway projects; and he does not say that lightly, but he can see highway projects being totally stopped until you overturn the issue of necessity on an appeal and that takes six to eight months at a minimum or a year.

MR. SHANAHAN verified that he did appear in the Senate and opposed this very provision; he supported the bill, but opposed the attempt by the Northern Plains Resource Council to strike the show cause hearings and the Senate offered this compromise as an alternative.

MR. PATTEN indicated that he did not think that one judge in one district could make a decision on this and this would be binding on another judge in another district; he could see that it is entirely conceivable that one judge could make a finding in a particular case and across the county in a different judicial district, a judge might come to a different conclusion. He did not see how having a jury would make any difference in what is already there, as they have different judges.

CHAIRMAN BROWN wondered how many times has anybody asked for a jury trial in an eminent domain proceeding. MR. SHANAHAN replied never in his experience. MR. PATTEN responded that he had never heard of any.

REPRESENTATIVE RAMIREZ stated that he felt they were talking about a very, very important point; you can

say that a judge from one county might decide differently than a judge in another county, and that is conceivable; but, if they are creating the right to a jury trial, juries in this kind of a situation are not totally objective and impartial, particularly in a small county for a large project that is condemning land there. He contended that there could be some real problems and it could stop a lot of projects. He stated that just because a project is conceived, he did not think that it should be constructed, but you could stop a justifiable project that is in the public interest because of a local jury that has a local axe to grind. He felt this was a major problem procedurely; but he thought this could be corrected fairly easily just by specifically indicating that there is no such right; then everybody would be satisfied; the Northern Plains should be satisfied as their attorney acknowledges that he doesn't think there should be a right to a jury trial and he felt that this is something that is extremely critical in this bill.

CHAIRMAN BROWN indicated that in the Highway Department they hire some of the best legal minds in the state and if there is ever a case to request a jury trial, this would be the case to do it and he does not understand if the existing statute provides for it, how this enhances it. He thought that everybody that went to court over an eminent domain proceeding right now would ask for a jury trial if possible.

REPRESENTATIVE RAMIREZ said that we are changing the law, but the question will be open and as long as they have the bill here, they should clarify it.

REPRESENTATIVE HANNAH asked Mr. Patten what his comments would be in regard to a jury trial on these proceedings. MR. PATTEN replied that he would disagree with REPRESENATIVE RAMIREZ's understanding that he would have a problem with a jury trial; a jury is part of our judicial system; it has been part of our system for hundreds

of years and he did not see any reason why a jury should be any more of a problem or more fallible than they are in any kind of a judicial proceeding that they might have.

REPRESENTATIVE HANNAH asked if he would have any objection to changing the language so that it was clear. MR. PATTEN replied that he did not have any objection to having a jury trial if one of the parties want it, but if the parties do not want a jury trial, it is not going to be forced on them.

REPRESENTATIVE HANNAH asked if he perceived, under the new language in this bill, there would be more jury trials in this particular area. MR. PATTEN responded that jury trials are allowed under the present law and he did not see why there would be any increase.

REPRESENTATIVE DAILY asked Mr. Beck if this bill the way it is written is not going to cause him a tremendous amount of problems. MR. BECK replied that as it stands now, he did not think it is, if they do not have jury trials. He noted that another point that should be made on jury trials and that is that in the far reaches of the empire, they do not have juries sitting all the time, such as in Plentywood, and in order to get the jury impaneled, you have to wait until they get a jury trial; if you have the six-month provision plus the inability to obtain a jury, whenever you might want one, then you are going to have a problem, especially if you do not get all the issues of necessity brought to issue at the time they have a jury trial. He said that a lot of people fail to realize that there are counties in Montana where you have law in motion once a month and scheduling necessity hearings in those counties is very difficult at the present and when you add the problem of impaneling a jury to decide the question of necessity, then, in his opinion, you are going to have inordinately long delays.

REPRESENTATIVE DAILY said that the way he understood that this bill is going to allow for jury trials and

right now, the judge is making those decisions when it comes to necessity. He asked if this is the way it is. MR. BECK replied that at the present time, the judge decides the whole issue of necessity.

REPRESENTATIVE DAILY said that he just agreed that this bill was O.K. MR. BECK responded if you construe it not to allow jury trials; if it is allowed to construe jury trials, then the bill is not O.K. and he would strenuously object to it.

MR. SHANAHAN explained that they are not in a position wherein they are having a jury decide the rights between two parties, but they are dealing with the exercize of sovereign power of the state and the legislature is holding this; they are deciding whether the state should go ahead and exercize its right to retake property or whether it should not; because when they give this to a jury, the jury may well decide that it cannot be exercized.

REPRESENTATIVE DAILY asked if the judge is going to decide if it is necessary or if the jury is going to decide, under the way this bill is now. MR. SHANAHAN replied that he does not know - that is why he raised the question; that it is an up-for-grabs question and is moot until we get this thing in the first courthouse and the first judge decides that he only has the right to make this decision; someone demands a jury trial and appeals.

REPRESENTATIVE DAILY said that Mr. Beck doesn't think that this is a moot question considering his last question, because he is saying that this bill does not do that.

REPRESENTATIVE JENSEN said that it seemed to him that they should insert the original language "a court or a judge" if that is the only bone of contention that they have here if under the current law, juries are never used in determining necessity.

REPRESENTATIVE KEYSER commented that if you think that is the only language that is going to effect this, they are not reading the bill very carefully. He noted that on page 4, starting with line 6 to line 8, that language there is absolutely civil procedure language; then you go to the bottom of that same page, and there is included as brand new language "" including the Montana Rules of Civil Procedure"; as of this time, you do not have that in the bill; that is not being considered normally under any proceedings you have now; you are not taking it as a civil procedure, because if you go through the old language, "the facts necessary to be found before condemation" and it goes on to say what will be considered as the rules and civil procedure is not included in there. He continued that now, under this bill, civil procedure is included very definitely and he would say that you have very definitely set up a procedure for court action by jury, in all cases if they want it.

REPRESENTATIVE ADDY commented that he thought that Title 25 under the present law, is applicable to these proceedings and that is, by and large, the Rules of Civil Procedure; the language on the bottom of page 4 adds the Montana Rules of Evidence, which is Title 26; and the Montana Rules of Civil Procedure are applicable. He said he wanted to clarify, if not narrow the differences that he sees developing here; i. e. previously following the Rules of Civil Procedure, the hearing on the issue of necessity was a show cause hearing, which by definition is before a court without a jury; now a full adversarial proceeding is allowed; he was sorry that Mr. Shanahan did not bring up the point, because the question of a jury is one that never occurred to him and when they were going through striking "judge" and putting "court" only is a question that never came up in his mind and he did not know if this was raised in any hearing. He felt that they were trying to redefine the relationship between the companies and the landowners; the most important thing that the landowners have been trying to do is to get more time, including the device of discovery prior to the time that the issue of necessity is decided; that tool of discovery - finding out just exactly what public use there is and a little more

about the project that they are defending their land against in time to prepare a case like that - he thinks is the major procedural advance that they are trying to gain with this tool. He asserted that he had great faith in juries; there have been many divorce cases where he wished he had a jury; but the inquiry that is pursued by a jury or a judge is fairly well defined in section 2 now and what you are trying to do is make it clear that the burden of proof remains upon the condemnor all throughout the proceedings. He noted that before, when there was a show cause hearing, and he realizes that there is a difference between the burden of proof; i.e. if the evidence is dead even, then the burden of proof is on the plaintiff, then the plaintiff loses; if the burden of proof is on the defendant, then the defendant loses; with the show cause hearing, it was the defendant who really had the burden of going forward, which he felt was a big part of the burden of proof - you are guilty until proven innocent in a show cause hearing; and he thought that was the reason they were trying to get away from a show cause hearing; they want to keep, not only the burden of proof, but the burden of going forward on the company, who is trying to alter the status quo. He indicated that he guessed he could not jump up and down and say, "By God, I want to have a jury" in any hearing like this; and he can see why lawyers would want to argue this before a judge; a judge may be more likely to disqualify himself if they suspect bias on their part; perhaps there is going to be a juror that isn't going to tell the plaintiff's counsel, even if they are asked directly whether their grandmother has had her ranch condemned or not; and that can happen. He stated that what he is getting down to is whether they can insert the language limiting the necessity hearing to a hearing for a judge only without killing this bill, because that is exactly what he is concerned will happen, if they amend this bill and send it back to the Senate. He emphasized that he is genuinely concerned.

REPRESENTATIVE RAMIREZ asked Representative Addy if he were trying to stop a project; you represent a landowner, would he ask for a jury. He said that he could answer the question for him, because he knows that he would. REPRESENTATIVE ADDY replied that it would depend on which judge he draws, but all other things being equal, he would have a better chance with a jury, because if the jury decides it; then you can go to the judge and ask him to reconsider the jury's findings before you begin to appeal. He said this would give you one more step in the process.

REPRESENTATIVE RAMIREZ asked why did he think this bill is going to be dead, if we try to make that one change in it - he said he could not really agree with that and he asked what was the vote in the Senate on this. REPRESENTATIVE ADDY replied that the vote in the Senate was overwhelming; he did not know how many times this bill was heard; how many times it was considered and reconsidered; he thought it was kind of like the girl who cried "wolf"; if it goes back there right now, he is a little concerned that there might be some animosity due to the fact that they have to consider it once more.

CHAIRMAN BROWN commented that it would seem to him that the other alternative here is that the governor could apply a veto if he was convinced that there was a problem in this area.

REPRESENTATIVE ADDY said that if there is a change they would like to make in the bill and if they are not going to kill it by sending it back to the Senate one more time, he thought he would like to amend it.

MR. TULLY asserted that the fact is that they, the laymen of the Northern Plains Resource Council, have put forth their best efforts in support of this bill and hope for its passage; and in all honesty had no thought of stopping anything; they accept the principle down through the ages, from Roman times, of the sovereign right of the state; they do not question that; nor do they assume that there is much of a contest as to whether

or not a project will go forward; what their main purpose has been throughout has been to end the possession of a pair of loaded dice or a stacked deck in the hands of the condemnor; and that is it simply in a nutshell; it has never been their contention or position that they were going to stop anything because they do believe and accept the power of the state for the greater benefit for the greater number and the possible sacrifice and disadvantage of the individual through condemnatory proceedings. He said that they acknowledge that and believe in it, so that has not ever, at any time, been their purpose; rather it has been to even the adversarial position - after all, someone wants to take something of ours and they feel that they should prove necessity and desirability from the public point of view; and then prove how little they should pay and how much, from their position, they should receive.

REPRESENTATIVE RAMIREZ moved that the Senate amendments BE NOT CONCURRED IN. REPRESENTATIVE HANNAH seconded the motion. He stated that he takes at face value what the gentlemen from the Northern Plains Resource Council has said; that that is one of the problems with an organization that comes in and testifies; i.e. they cannot come in and speak on behalf of everyone, even in their own organization, and they cannot speak for everyone in the public; there are people knowing that this potential exists will try to take advantage of it; we have to look not only at the people who are before us, but they have to look at what is the best interests of all of the people of the state of Montana. He indicated that he is not making this motion to try and kill the bill and he really did not think that it would kill the bill, if they were careful in the way they approached this; certainly, Speaker Kemmis is going to be able to appoint the members of the committee from the House side; and, if they have that one concern, which he felt was a legitimate concern, now is the time to clarify the language; they are not doing anything that anyone apparently objects to; we are just trying to make sure that they eliminate a question as to whether or not a jury can or cannot be called for; because if you can

have a jury trial on necessity, you are going to have some tremendous problems and he has faith in the jury system up to a point, but he knows that juries are governed by emotion. He continued that, if he were representing a landowner in trying to stop a project, he would rather take his chances with a jury, as he would have a better chance of making the kind of argument that might stop the condemnation. He felt he could look at this objectively, too, because he has land, where they have power lines going right through the middle; they have had land taken by condemnation by the highway; but if you are going to have these things, you have to have a procedure that does not permit people to obstruct the system. He said that he thought this bill has improved the situation by making it a more reasonable balance, but if they let that slip through and create that question, he thought they would be doing one of two things - they would be back here trying to correct it next time or they are going to hold up a lot of legitimate projects.

REPRESENTATIVE ADDY asked REPRESENTATIVE RAMIREZ if he were representing the Highway Department and they wanted to run a highway across the Martinsdale Hutterite colony, would you ask for a jury. He responded no and that wouldn't be fair either; as a practical matter, the Highway Department might very well make that decision, but what they would be doing is they would be trying to get the advantage of a prejudice against a certain group of people in order to make a legal determination. He did not feel that this would be any more right for them to do that, or to have the opportunity to do that, than it would be for someone on the other side to try to invoke some prejudice against this whole process to defeat the project.

REPRESENTATIVE ADDY said that maybe there would be a bias against the Highway Department.

REPRESENTATIVE JENSEN asked REPRESENTATIVE RAMIREZ if he said that he believes in this process up until some point wherein you see the jury obstructing our judicial process. REPRESENTATIVE RAMIREZ responded that he did not say that; that is his interpretation of what he said; he said that juries are fallible; he has tried a lot of cases in front of juries; it is true that you have some methods to try and insure you are getting a good selection of unbiased jurors. He cited an example wherein the firm he was associated with was doing work for the old Northern-Pacific Railroad; he tried a case to a jury, wherein a guy had run into the side of a train; he asked the jurors if they had ever had any similar experience, where they had either had a close call or an accident involving a train; one of the prospective woman jurors replied that she had, i.e. she and her father had been driving near Bridger; there is a crossing there; her father had not seen the train; he was driving and at the last minute, he saw it and came to a stop; there was no accident, but it scared them a little bit. He continued that he asked her if there was anything in that experience that she felt would influence her; she replied that no there wasn't anything; he asked her if there was anything that would keep her from being totally objective; can you put that out of your mind; would that influence your decision in any way; and she replied no, no, no, it wouldn't make any difference. He indicated that he was told later, after having got an adverse jury verdict, that the first thing she said when she walked into the room was, "By God, they almost killed my father back at that railroad crossing and I'll never forget that." He contended that you have those problems with juries; in a small county, there can be an awful lot of emotion and he felt that what Mr. Beck has said is absolutely true, that there isn't a county anywhere where you can get twelve people anywhere, who did not have some axe to grind. He alleged that they don't like the Highway Department.

REPRESENTATIVE JENSEN queried if it was his intention to replace the jury with a sitting judge. REPRESENTATIVE RAMIREZ replied that it is advisable to do what the procedures compel; it requires a court determination on that very narrow, legal and factual issue of necessity and that is all he felt should be preserved; we should make sure this is clear that they are not making any change; that is the procedure that will still be followed; and the rest of it, he did not care if they touched another part of this bill; and he means that sincerely.

REPRESENTATIVE HANNAH commented that they are not tampering with the compromise that has been handed out in the Senate; it would appear to him that that is where the movement was made in a conference to try and amend this bill and Representative Addy's concerns are well-founded that the Senate would probably say, "See you next session." He thought this was a legitimate concern; Representative Addy never recognized it; Senator Mazurek said that the Senate never talked about it; it is a new area; and, if he understood the testimony, it is a critical point. He said that that is the way it is being worked now; it is not a major thrust of either side to try and take it out; there is a potential for a lot of problems with it and he felt that Representative Ramirez is right; i.e. if they leave that particular area as a status quo, they would solve the potential for a lot of problems and there would be a lot of benefit from the bill, as far as the compromise that has been worked out.

REPRESENTATIVE SPAETH indicated that he is not absolutely certain whether or not the bill requires a jury trial or not - he hasn't been convinced that it does require a jury trial; and he was not sure if they were tilting the windmills on that particular issue; he did not have a lot of trouble with clarifying it if it doesn't put the bill in danger; he thinks it is a good bill otherwise; and he is not sure what is happening to this bill. He stated that he was surprised we were sitting on this bill as a committee and he wondered

why they were doing this if there isn't something happening. He commented that he has to defend juries a little bit; he can tell horror stories about judges too; he can also tell about the advantages of judge shopping, which happens quite frequently in some condemnation cases that he knows of, where everyone uses their disqualifications to find a judge, which everyone seems to agree with; he did not feel that juries were that bad and he was surprised to hear that.

REPRESENTATIVE FARRIS commented that whatever prejudices there might be against a power line, a highway or a coal company, that might exist in a jury trial, they are outweighed by the part that says it has to show that it is in the public interest; that the public interest creates its own kind of prejudice and it is so much weighted, that it does not matter if there is a little prejudice against the company, the highway department or whatever, so she did not see that it was that important that they bother the Senate again with this bill.

REPRESENTATIVE ADDY indicated that if it is a minor amendment, and there is some language that he has seen that would add four words to Section 6, page 7, line 20, subsection 1 "the court, sitting without a jury, has power to"; if they can do that without upsetting the apple cart (and he does not have any trouble with not concurring with all the Senate amendments) he could vote for the motion at this point; but he wants to go over and talk to Senator Mazurek a little bit and he wants to stick his toes in the water in the Senate Judiciary Committee and see what they want to do.

CHAIRMAN BROWN said that he came prepared to kick this thing back to the floor and get it out of here; but he felt that there was some genuine concern about this one provision; and it would be the chair's intent that, if we concur in Representative Ramirez's motion, that a statement of intent from the committee as to the Do Not Concur motion goes to the floor saying

basically what Representative Addy suggested in those three or four words; that that is the recommendation of this committee and the bill otherwise will not be touched.

The motion BE NOT CONCURRED IN was voted on. All voted aye with the exception of REPRESENTATIVE DARKO, REPRESENATIVE VELEBER, REPRESENTATIVE SCHYE, REPRESENTATIVE JENSEN and REPRESENTATIVE FARRIS voting no.

REPRESENTATIVE DAILY said that this is obviously a very serious matter; it affects a lot of people on both sides of the question; he did not know why this committee would be afraid to send this to the Senate; and, if other questions arise as the result of the conference committee, we can address those questions. He contended that there has been several questions that have come up on this bill today, and they are serious questions and they concern a lot of people; he thought that if they are going to make a decision on eminent domain, which not only affects the state of Montana, but which affects Arco and a lot of other giant corporations, that they should have a free conference committee. He thought that if they are afraid of the Senate and afraid what the Senate will do, they should go home right now and he does not concur in what they are saying.

CHAIRMAN BROWN asked what he said. REPRESENTATIVE DAILY responded that he wanted to limit it and he did not think that they should do this.

CHAIRMAN BROWN said that they can't limit it by the statement of intent, but they can tell them where it is coming from.

REPRESENTATIVE SPAETH commented that Representative Hannah wanted him to say that he thought they needed a free conference committee in order to make those changes.

CHAIRMAN BROWN indicated that they could make the recommendations and the Speaker will have to decide.

CHAIRMAN BROWN moved that a statement of intent of the committee's action be attached to their recommendation addressing the one problem. REPRESENTATIVE HANNAH seconded the motion.

REPRESENTATIVE EUDAILY explained that they can always come back and ask for a free conference committee if they see other things that have to be addressed.

CHAIRMAN BROWN stated that the Speaker will have to do what he thinks is necessary to accomodate this if the floor concurs and the floor might not concur in this motion.

The motion passed with REPRESENTATIVE DAILY voting no.

REPRESENTATIVE SPAETH said that, since they have all the parties here, he would like to ask before it goes to a conference committee, if any of the parties have any changes that they would like to suggest other than just clarifying it to the fact that there is no need for a jury trial in the issue of necessity.

MR. SHANAHAN indicated that as far as the Northern Tier Pipeline is concerned, the language that is suggested by Mr. Beck and repeated by Mr. Addy is satisfactory to them.

MR. PATTEN indicated that it was acceptable to the Northern Plains Resource Council.

DON ALLEN, representing the Rocky Mountain Oil and Gas Association, stated that he has not seen the language, but he would accept the expertise of Mr. Shanahan; but he felt that the jury question is a real concern from the standpoint of these small pipelines and oil field gathering operations and drilling operations. He thought this would clarify it a lot.

There were no further questions or comments and the hearing on this bill was closed.

SENATE JOINT RESOLUTION 24

SENATOR MAZUREK, District 16, Helena, stated that this resolution was requested by Duke Crowley from the law school and requests the Montana Supreme Court to do a study on the laws on venue and the statutes of limitation. He indicated that last session the code commissioner had a bill that changed all the rules of evidence; they felt that it was too technical to look at in that short session; they asked the supreme court committee on evidence to work on it since they work with those rules every day, they did this and they came back with a nice short bill on the rules of evidence. He contended that this bill would do the same thing with the statutes of limitation and on venue.

There were no proponents and no opponents.

SENATOR MAZUREK closed.

REPRESENTATIVE KEYSER asked where was the money coming from. SENATOR MAZUREK replied that the supreme court currently has a commission on evidence so it comes out of whatever money the supreme court already has; there would be legislative money spent in the sense that whatever time you would allocate to a person to assist the committee and from the state bar, which is funded from dues from its members. He said this was just requesting the supreme court to do it and they could ignore it if they wanted to.

REPRESENTATIVE EUDAILY asked if this would be a study that will be prioritized by the legislators after the session is over and will it take some of the money from those studies. SENATOR MAZUREK responded no, he did not think so - it would take legislative money only to the extent that you would have a staff person from the Legislative Council working with the committee and that would involve some time; the Legislative Council is

not going to pay lawyers who are on this committee to come to the study; and the lawyers on the committee on the rules of evidence did the study on their time and reported back. He stated that there was no legislative money spent, but there was one staff attorney, who worked with the committee and his ideas were appreciated and he participated in putting the bill together. He emphasized that it is not a legislative interim study that would be prioritized and would not take any money from that appropriation; it would be funded out of the supreme court's money for their evidence commission and from the state bar which is funded by the attorneys of the state.

CHAIRMAN BROWN asked if this was in-kind money that was already allocated. SENATOR MAZUREK replied yes, you are going to pay those salaries whether that person works on this or he does something else.

There were no further questions and the hearing on this bill was closed.

EXECUTIVE SESSION

SENATE JOINT RESOLUTION 24

REPRESENTATIVE JAN BROWN moved that this resolution BE CONCURRED IN. The motion was seconded by REPRESENTATIVE VELEBER.

REPRESENTATIVE EUDAILY asked how much demand they can put on staff attorneys; it mentions plural on attorneys and not just one person that might be assigned to them; he wondered if this was a request that is coming from them to the Legislative Council and it is mandatory upon them to furnish as many attorneys as they want.

CHAIRMAN BROWN said that it would be his opinion that the Legislative Council would be requested to participate with one or more attorneys; they might rotate but keeping familiar with the aspects of the bill so that

when it is time to draft a bill, they have an educated person on this bill. He felt that this would not cause any problems and Ms. Dowling could limit that input as little or as great as she wants.

MS. DESMOND said that she could speak of the time that Lee Heiman spent on the evidence study - he did spend time over two years, but she thought that the bulk of the work was done by the supreme court on the study that led up to the bill; and she did not feel that it took an inordinate amount of his time.

REPRESENTATIVE EUDAILY said that his problem is with the word "staff"; if it were "assistance" or something like that he would like it better; he felt the responsibility could be put on the staff attorneys of the Legislative Council the way it reads - maybe that is not what they mean and it probably is not, but it bothers him.

CHAIRMAN BROWN stated that he did not see a big problem there.

There was no further discussion and a vote was taken. The motion carried unanimously.

HOUSE BILL 540

REPRESENTATIVE BERGENE moved that they CONCUR IN the Senate amendments to this bill. The motion was seconded by REPRESENTATIVE FARRIS.

MS. DESMOND explained that the new crime of per se, driving with more than .10 blood alcohol concentration was included in this bill as it was originally drafted in section 61-8-401, which is section 3 of the bill, and makes driving under the influence of alcohol a crime. She said, as originally drafted, there was a subsection put in making driving with .10 blood alcohol concentration in the blood a crime; then in the penalty

section for driving under the influence, which is 61-8-714, there was a separate subsection added in for driving with .10 blood alcohol concentration. She indicated that the Senate Judiciary Committee simply pulled out that crime and that penalty from the existing statutes; and in section 2 at the bottom of page 3, they have reinserted the language as originally drafted setting up the crime of per se. She continued that on the bottom of page 11, this sets up a separate section for the penalty for driving with more than .10 blood alcohol concentration. She explained that it was her understanding that this was done simply because, as originally drafted, it was felt to be awkward having to go from subsection to subsection for the crime and the penalty.

She further explained that, as originally drafted, the first offense on the bottom of page 11 and the rest of page 12 are where the penalties are for per se crime. She stated that the penalties for the first offense were originally not more than ten days and not more than $500.00; that would be the same, but the penalties for the second offense, which were originally not more than thirty days and not more than $500.00 were changed to not less than 48 consecutive hours or more than 30 days and not less than $100.00 and not more than $500.00. She noted that originally the third offense was not less than six months and not more than a fine of $1,000.00, which now says not less than 48 consecutive hours or more than six months and not less than $300.00 or more than $1,000.00.

She continued that on the bottom of page 6, section 4, the Senate added language that states, "Wnen the same acts may establish the commission of an offense under both (section 2) and 61-8-401, a person charged with such conduct may be prosecuted for a violation of both (section 2) and 61-8-401. However, he may only be con victed of an offense under either (section 2) or 61-8-401." She explained that section 2 is the per se violation and 61-8-401 is driving under the influence; a person may be prosecuted for both of these crimes; in other words, a complaint may be filed against him for both of these crimes, but a person can only be convicted of one of them.

She further indicated that the language "upon the ways of the state open to the public" has been inserted throughout the bill.

CHAIRMAN BROWN noted that they amended HB 260 and took out the language which says "with the expressed and implied consent", and if HB 260 passes and this one passes, which one would prevail, he asked. MS. DESMOND replied that she thought this one would prevail.

REPRESENTATIVE KEYSER stated that he would disagree with the motion to concur in these amendments, because of the new section that the Senate put in there dealing with the penalties on page 12 of the salmon-colored bill in subsection 2, wherein it says the conviction will be two days or more than thirty days and the fine is basically the same as in the first conviction and on the first offense, they can get up to ten days. He contended that, if you are really trying to stop the repeater, that doesn't even sound reasonable to him. He felt the third was about the same way "not less than 48 consecutive hours", but they did raise that fine. He said that is just two days and he has problems with that area.

CHAIRMAN BROWN indicated that Representative Vincent desires that they not concur in the Senate amendments and have it go to a conference committee.

REPRESENTATIVE ADDY asked if there was some federal guidelines they were trying to comply with and he wondered about the penalties. DUANE TOOLEY, Chief of the Driver Services of the Department of Justice, said that they felt it would comply; there are other problems with it, but that isn't one. He indicated that on page 8, lines 22 and 23, it would appear that the amendment added there would suspend the license only in Montana; on page 10, there did seem to be a problem in numbering; and it appears to arrange the test so that you cannot get a per se unless you go through the laboratories. He felt that should have an "or" in there.

COLONEL ROBERT LANDON, Chief Administrator of the Highway Patrol Division of the Department of Justice, advised

that most of these tests will be given by breath-testing devices; they will not be going to the laboratories in the form of blood or urine samples, so, therefore, it is important to put the "or" in. He further said that he agrees with Representative Keyser's position on penalties on subsection 2 and 3 on page 12; and in addition to that, he is concerned about the first section where it does not require a person to serve time in jail. He noted that they have HB 250, that has passed that requires 24 hours in jail and, under the per se conviction, the person would not be required to go to jail to serve the time; so this creates a real problem. He contended that it creates a discretion on the part of the officer; he should charge someone and the discretion be on the part of the county attorney or the judge - it should not be on the part of the officer; then they have the situation where a person can be arrested; and a test would not be available and that person could only be charged under the traditional dui statute and, therefore, if he was convicted, then he would have to go to jail; and if a test were afforded, he may not have to go to jail, because they could be charged under the per se section. He thought, to be consistent, that they should just add the 24 hour penalty to that section so that a new section on section 9 would read, "penalties for driving with excessive blood alcohol concentrations, a person convicted of a violation of section 2 shall be punished by imprisonment for not less than 24 consecutive hours or more than 10 days in jail" and this would be consistent with HB 250.

REPRESENTATIVE SPAETH noted that under HB 250, you can go ahead and get a conviction under that and go for the 24 hours anyway, he wondered what was the difference there and why would they necessarily want this to be consistent with that. COLONEL LANDON replied that maybe he does not fully understand HB 250, but he thought that upon conviction of a charge of DUI, a person must serve 24 hours in jail; under this bill, if a person is charged under the per se portion, then upon conviction, they would not serve the 24 hours; he thought this was inconsistent where in one place, he would have to serve and in the other, he would not have to serve and this based on the fact that he was or was not given the test. He indicated that, in some places, the test

just would not be available.

REPRESENTATIVE SPAETH asked if there was a greater degree of proof required under HB 250 than is required under per se. COLONEL LANDON responded not in his judgment; he thought that per se is the best evidence available for a chemical test; the other tests and information is based on the officer's observations of a person's pyschophysical skills; he may or may not be impaired and there is a human judgment factor. He felt the best evidence is the chemical analysis, rather than the traditional charts.

REPRESENTATIVE EUDAILY noted on page 2, lines 2 through 6, that they have changed "upon the ways of the state open to the public" back to "anywhere within this state"; this only deals with drugs, but he wondered why this would be any different. MS. DESMOND replied that the reason that was changed was because in present law, there is a distinction made between driving under the influence of drugs, which is a crime anywhere within the state, (she presumes that is because drugs are illegal) and a distinction between driving under the influence of alcohol. She advised that in the course of amending this, when it was in the House, that distinction was blurred and she did not think it was the intention to restrict the application of driving under the influence of drugs.

REPRESENTATIVE KEYSER made a substitute motion that they DO NOT CONCUR in the Senate amendments. REPRESENTATIVE ADDY seconded the motion.

CHAIRMAN BROWN pointed out that the Senate is coming from a position that dui crimes are much worse than per se crimes; and they basically do not like the per se crimes. He noted that they have a choice of passing the Senate amendments; sending to the Governor a bill that will never work or they can go to a free conference committee, where it will probably die anyway.

A vote was taken on the motion BE NOT CONCURRED IN and the motion carried with REPRESENTATIVE IVERSON, REPRESENTATIVE FARRIS and REPRESENTATIVE DAVE BROWN voting no.

There being no further business, REPRESENTATIVE KEYSER moved that the meeting be adjourned at 11:07 a.m.

Dave Brown
DAVE BROWN, Chairman

Alice Omang
Alice Omang, Secretary

STANDING COMMITTEE REPORT

April 2, 19 83

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration SENATE JOINT RESOLUTION Bill No. 24

first reading copy (blue color)

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE MONTANA SUPREME COURT, IN COOPERATION WITH THE STATE BAR OF MONTANA AND WITH STAFF ASSISTANCE OF THE LEGISLATIVE COUNCIL, TO STUDY AND PREPARE RECOMMENDATIONS FOR THE 49TH LEGISLATURE ON UPDATING AND CLARIFYING THE LAWS ON VENUE AND STATUTES OF LIMITATION.

respectfully report as follows: That SENATE JOINT RESOLUTION Bill No. 24

BE CONCURRED IN

STATE PUB. CO.

Chairman.

COMMITTEE SECRETARY

STANDING COMMITTEE REPORT

April 5, 19 83

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration SENATE AMENDMENTS TO HOUSE Bill No. 540

Third reading copy (Blue color)

AN ACT REVISING AND EXTENDING THE GEOGRAPHICAL APPLICATION OF THE LAWS PROHIBITING DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; MAKING IT AN OFFENSE TO DRIVE A MOTOR VEHICLE WITH A BLOOD ALCOHOL CONCENTRATION OF MORE THAN .10; PROVIDING FOR THE ADMISSIBILITY OF EVIDENCE; AMENDING SECTIONS 61-8-101 AND 61-8-401 THROUGH 61-8-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.*

Respectfully reports as follows: That SENATE AMENDMENTS TO HOUSE Bill No. 540

BE NOT CONCURRED IN

DAVE BROWN Chairman.

COMMITTEE SECRETARY

STANDING COMMITTEE REPORT

April 5, 19 93

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration SENATE AMENDMENTS TO HOUSE Bill No. 625

White reading copy (Blue color)

A BILL FOR AN ACT ENTITLED, "AN ACT TO GENERALLY REVISE THE EMINENT DOMAIN LAWS;" AMENDING SECTIONS 70-30-101, 70-30-102, 70-30-111, 70-30-112, 70-30-201, THROUGH 70-30-203, 70-30-205, 70-30-207, 70-30-301, 70-30-302, 70-30-306, 70-30-308 THROUGH 70-30-310, AND 70-30-313, MCA; REPEALING SECTIONS 69-13-104, 70-30-104, 70-30-204, 70-30-209, 70-30-305, 70-30-311, 70-30-321, 70-30-322, 82-2-201 THROUGH 82-2-213, 82-2-221 THROUGH 82-2-224, AND 82-10-501 THROUGH 82-10-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Respectfully report as follows: That SENATE AMENDMENTS TO HOUSE Bill No. 625

BE NOT CONCURRED IN

DO PASS

STATE PUB. CO.
Helena, Mont.

Chairman

COMMITTEE SECRETARY

The Big Sky Country

MONTANA STATE HOUSE OF REPRESENTATIVES

REPRESENTATIVE DAVE BROWN
HOUSE DISTRICT 83
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PHONE (406) 782-3604

COMMITTEES:
JUDICIARY, CHAIRMAN
NATURAL RESOURCES
HIGHWAYS
ENVIRONMENTAL QUALITY COUNCIL, VICE-CHAIRMAN

April 5, 1983

Representative Daniel Kemmis
Speaker of the House of Representatives
Capitol Building
Helena, Montana

Dear Sir:

The House Judiciary Committee, in executive action held on April 5, 1983, voted to recommend to the House Committee of the Whole that it not concur with the Senate amendments to House Bill 825 and that a conference committee on the amendments be convened.

The House Judiciary Committee recommends nonconcurrence because of one issue that was raised during its meeting on the bill. That issue is the question of availability of a jury trial in a proceeding for a preliminary condemnation order. It is the intention of the House Judiciary Committee that the conference committee act on this issue only, and that it act on this issue by clarifying that a jury trial is not available in the preliminary condemnation proceedings.

Very truly yours,

Dave Brown

Dave Brown, Chairman
House Judiciary Committee

cc: Senator Stan Stephens
Senator Jean Turnage