

MINUTES OF THE MEETING
STATE ADMINISTRATION COMMITTEE
MONTANA STATE SENATE

January 23, 1985

The ninth meeting of the State Administration Committee was called to order at 10 a.m. on January 23, 1985, by Chairman Jack Haffey in Room 331 of the Capitol Building.

ROLL CALL: All members were present with Senator Lynch arriving late.

CONSIDERATION OF SENATE BILL 114: Senator Story is the sponsor of this bill entitled, "AN ACT TO MAKE SCHOOL ELECTION POLL HOURS APPLY TO ELECTIONS FOR OTHER POLITICAL SUBDIVISION; AMENDING SECTIONS 20-20-106 AND 20-20-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE." Senator Story said there was some problems with this bill and he handed out a list of amendments which will correct the problem. (List of amendments attached hereto marked Exhibit "B" and by this reference made a part hereof.) I earlier entered a simple little bill to change and simplify school elections to be held together with other elections in order to save some money. It seems that it didn't work. The school district elections should be held when the school district wants to hold an election and not have to be held in conjunction with the fire districts which sometimes hold their elections at 7 a.m. Senator Story further said that the amendments would amend a section of law that should be amended to make it consistent, and the other amendments are simply typographical changes.

PROPOSERS: Bill Adamo, Clerk of the Livingston School District, supports this bill. He said that many of his election workers were senior citizens and if the election took place at 7 a.m., it makes too long a day for most of his workers. He said that if the law is left like it is, he will have to train a whole new staff of election workers.

Wayne Buchanan, Montana School Board Association, supports this bill.

Margaret Davis, League of Women Voters, supports this bill in principle. She said that she felt the amendments should be looked at very carefully. She had just received a copy of them and had not had time to look them over. Ms. Davis said that it was the language that they questioned.

OPPOSERS: There were no opponents.

Senator Haffey then asked for Committee questions. Senator Conover asked if there was some way to put in this law that people in the fire districts would be appointed instead of having to run for office. Senator Story said no, there is another bill coming out that addresses that problem. Senator Story deferred to Jean Johnson

January 23, 1985

of the Secretary of State's Office. She said that she would be happy to check into that for Senator Conover.

In closing, Senator Story said that he hoped that they would put in an immediate effective date. Senator Haffey declared SENATE BILL 114 closed.

EXECUTIVE ACTION ON SENATE BILL 114: Senator Conover moved that the amendments be passed. Senator Haffey said that our staff Attorney in conjunction with the Secretary of State's Office prepared these and that these amendments do what was desired by Senator Story and all of them. Senator Lynch called question and the amendments passed unanimously. Senator Tveit made a motion that SENATE BILL 114 do pass as amended. Senator Lynch called question, and it was unanimously passed that SENATE BILL 114 DO PASS AS AMENDED.

CONSIDERATION OF SENATE BILL 111: Senator Story is the sponsor of this bill entitled, "AN ACT TO REQUIRE THE FEDERAL GOVERNMENT TO COMPLY WITH STATE CONDEMNATION LAWS." Senator Story said that with this bill he is asking the federal government to comply with the state condemnation laws. He said that over the years we have updated our laws, but they have not. He said that with this bill, he has been told repeatedly that he can not tell the federal government what to do. Senator Story feels that the Forest Service has been acting toward people as the kings did towards the peasants. Senator Story said that he was not against condemnation but that there are a number of ways to protect people's rights. In Montana, they have to prove that it is necessary that they have this piece of land before they can do this. Senator Story said that the roads were originally built for the farmers to get them from one place to another. In order to get to some public lands, there is a necessity to cross the farmer's land. I'm not against public access to public lands as long as they do it in such a way as to not hurt anyone. If the highway department were to try to confiscate some of your land, you are entitled to attorneys fees and court costs, not so with the federal government. Under the federal law, a Forest Service Supervisor can sign an affidavit that says he needs the ground. The affidavit is a statement of authority and they can take it. We have a young man here today whose father was offered \$1.00 because the Forest Service said they were going to improve his land by putting a road through it, and they took it.

PROPOSERS: Mike Busby is in favor of this bill. His father was the Livingston rancher whose land was confiscated by the Forest Service through use of the affidavit. His father was paid \$1.00 because they said that they had improved the value of the land with the road. The Busby's were not even allowed to sell the timber that they cut out in order to put the road in. The Forest Service sold the timber themselves for about \$1,000. Mr. Busby said that once they had the legal description and the four signatures on the affidavit that the land was theirs. However, the Busbys still pay the taxes on this piece of land.

OPPOSERS: There were no opponents.

January 23, 1985

Senator Haffey then opened the meeting to Committee questions. Senator Lynch told Senator Story that he was definitely in favor of his amendment and that he would like to put in a lot of bills telling the federal government to shape up, but didn't he think this was a lost cause, and that we really can't do this. Senator Story said that he had been told this over and over. He suggested that this bill be tabled if the members didn't want to hear it argued on the floor. Senator Lynch said that he felt it would cost a lot of money to send this bill through the system when it wouldn't do any good anyway. Senator Tveit said that he supports the bill and he thinks that the federal government should have to comply with our laws just as private sector does. He said that he has dealt with many oil companies and they pay him for the time that his land is not useable. The federal government should have to do this also. Senator Haffey felt that the story should be told on the floor of the Senate, but that it could be told through the resolution (SJR-8). He would like people to fully understand why this bill was written.

Senator Story closed by saying that the highest duty the Legislature has is to protect the little people. He hopes that his resolution and bill will do that. SENATE BILL 111 is closed.

EXECUTIVE ACTION ON SENATE BILL 111: Senator Haffey said that Valencia Lane, staff Attorney, had researched this problem and that passing SENATE BILL 111 was not feasible. It will do no good. Senator Lynch said that we should take Senator Story's advice and table the bill. The Committee was then informed that it would have to be brought up at the table and pass with a majority for it to come out of Committee. Senator Lynch made a motion to table SENATE BILL 111. Senator Manning called question and it was put to a vote. It was voted that SENATE BILL 111 BE TABLED, with Senator Tveit and Senator Farrell voting no.

CONSIDERATION OF SENATE JOINT RESOLUTION 8: Senator Story is the sponsor of SENATE JOINT RESOLUTION 8 entitled, "A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE CONGRESS OF THE UNITED STATES TO ENACT LEGISLATION REVISING THE FEDERAL CONDEMNATION PROCEDURES TO AFFORD GREATER CONSIDERATION TO THE INTERESTS OF THE LANDOWNER." Senator Story said that the same material applies to this resolution. The only difference is that this asks the federal government in a nice way to change their condemnation laws. Many sections of the federal law are very old and we are asking them to repeal those sections.

PROPONENTS: Mike Busby supports this resolution.

OPPONENTS: There were no opponents.

January 23, 1985

Senator Haffey opened the meeting for questions from the Committee. Senator Mohar asked when these laws were adopted. Senator Story said that it was a long time ago, but he wasn't sure how long ago. Valencia Lane, staff Attorney, said it was at least 50 years ago. Senator Anderson felt that persons were being denied due process of law, and Senator Story agreed. Senator Anderson seemed to feel that our Congressional delegation should take care of this. Senator Story agreed and he said that he has been on the phone to all of them. Senator Harding asked if there was something that could be done to get these people's land back. Senator Story said that they had been to many attorneys, but the attorneys eventually buy the government's argument that since there is a road through there it can easily be subdivided, and therefore, it is worth more. Senator Tveit felt that we should have passed the bill because they will just throw this resolution out. Senator Farrell wanted to know if anyone had challenged the constitutionality of that condemnation. Mr. Busby said that they had tried to but it is in the original Constitution of the United States under eminent domain. Senator Farrell felt very strongly that the state of Montana should tell the federal government to update their laws.

SENATE JOINT RESOLUTION 8 is closed.

EXECUTIVE ACTION ON SENATE JOINT RESOLUTION 8: Senator Conover moved that SENATE JOINT RESOLUTION 8 do pass, Senator Haffey asked if the resolution did what Senator Story wanted it to do. Mrs. Lane, staff Attorney replied that it did and that there were no problems with it. Senator Manning called question, and it was unanimously voted that SENATE JOINT RESOLUTION 8 DO PASS.

Senator Lynch told the committee that the subcommittee appointed to check SB-82 would not be finished by Friday.

The meeting was adjourned at 11:00 a.m.



SENATOR JACK HAFEEY CHAIRMAN

DATE Jan. 23, 1985

COMMITTEE ON

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

(This sheet to be used by those testifying on a bill.)

Exhibit "A"
SB 111
1-23-85

NAME: Mike Busby DATE: 1/23/85

ADDRESS: Rt 38 Box 2016

PHONE: 225-6988

REPRESENTING WHOM? _____

APPEARING ON WHICH PROPOSAL: SB 111

DO YOU: SUPPORT? ☒ AMEND? _____ OPPOSE? _____

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Exhibit "B"
SB 114
1-23-85

SB 114, Introduced (white), be amended as follows:

1. Title, line 6.

Following: "SECTIONS"

Insert: "13-1-106,"

2. Page 1, line 10.

Following: line 9

Insert: "Section 1. Section 13-1-106, MCA, is amended to read:

13-1-106. (1) Time of opening and closing of polls for all elections.
Polls must be open from 7 a.m. to 8 p.m., except polling places having fewer than 200 registered electors, which must be open from noon to 8 p.m. or until all registered electors in any precinct have voted, at which time the polls shall be closed immediately.

(2) When an election held under 13-1-104(3) and a school election are conducted in the same polling place, the polls shall be opened and closed at the times set for the school election, as provided in 20-20-106."

Renumber: subsequent sections.

3. Page 1, line 16.

Strike: "a"

Insert: "an"

4. Page 1, line 16

Strike: "special"

5. Page 1, line 16.

Following: "election"

Strike: "for another"

Insert: "held by a"

6. Page 1, line 17.

Following: "subdivision"

Strike: ", as required by

Insert: "under"

7. Page 1, line 17.

Following: "13-1-104(3)"

Insert: "and at the same polling place"

Exhibit C
SB-11
1-23-85

The Montana laws of eminent domain are found in Title 70 Chapter 30 of our statutes. The pertinent sections which I feel are far superior to the Federal statutes are: 70-30-107, 70-30-109, 70-30-110, 70-30-305 and 70-30-306.

Article 70-30-107 requires the government to go through a court proceeding to prove public necessity and to determine damages BEFORE taking possession of a private road. Apparently this safeguard is not in the Federal statutes. The forest supervisor has on his own decided the question of public necessity. His people have then offered the property owner \$1, have taken the road and are letting the public use it. The owner has yet to have his day in court or to receive any compensation. The situation has gone past a year.

Article 70-30-109 pertains to temporary logging roads and provides for their return to the owner after the completion of the logging operation and provides other safeguards to the property owner as well.

Article 70-30-110 requires any roads or other property taken to be taken in a location that will result in the LEAST harm to the property owner reasonably possible. This is an extremely important safeguard to ranchers. It would prevent the Forest Service from gutting an operating ranch for the sake of a few hunters or recreationists. If the

hunting or recreation area were truly important enough to put a road through to, the Forest Service would be required to put the road along the ranch boundaries or over the least productive land where possible. The present practice is to take over existing private roads that pass the private owner's yards where his kids and pets play, through his corrals, across his best meadows and hay fields. The public traffic is introduced across the heart of his operations causing traffic hazards and splitting his operations. His privacy is sacrificed, the tranquility of the ranch forever after shattered by trespass, vandalism, theft, fires, litter, and livestock-chasing dogs.

Articles 70-30-305 and 306 deal with compensation. The important feature here grants the property owner his legal fees when the last government offer has been below the jury award. This mechanism promotes reasonableness on the part of both the government and the property owner. Such a provision in the Federal statutes would put an end to the insulting and abusive offers of \$1 that the Forest Service has made.

ized to procure real estate for the erection of a public building or for other public uses, he may acquire the same for the United States by condemnation, under judicial process, whenever in his opinion it is necessary or advantageous to the Government to do so, and the Attorney General of the United States, upon every application of the Secretary of the Treasury, under this section and section 258 of this title, or such other officer, shall cause proceedings to be commenced for condemnation within thirty days from receipt of the application at the Department of Justice.

(Aug. 1, 1888, ch. 728, § 1, 25 Stat. 357; June 25, 1948, ch. 646, § 6, 62 Stat. 986.)

REFERENCES IN TEXT

Section 258 of this title, referred to in the text, has been omitted from the Code as superseded by Rule 71A of the Federal Rules of Civil Procedure, Title 28, Appendix, Judiciary and Judicial Procedure.

AMENDMENTS

1948—Act June 25, 1948, omitted the jurisdictional and venue provisions as they are now covered by sections 1358 and 1403 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1948 AMENDMENT

Section 38 of act June 25, 1948, provided that the amendment of this section shall be effective as of Sept. 1, 1948.

CROSS REFERENCES

Acquisition of land—

District of Columbia, see section 16-1301 et seq. of the D.C. Code.

Irrigation Project, see section 421 of Title 43, Public Lands.

River and harbor improvements, see section 591 et seq. of Title 33, Navigation and Navigable Waters.

War purposes, see section 2663 of Title 10, Armed Forces.

Jurisdiction of United States district courts in condemnation proceedings, see section 1358 of Title 28, Judiciary and Judicial Procedure.

Possession and title in advance of judgment, taking of, see sections 258a to 258f of this title.

Tennessee Valley Authority, procedure in condemnation proceedings, see section 831x of Title 16, Conservation.

Venue in condemnation proceedings, see section 1403 of Title 28, Judiciary and Judicial Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Procedure in condemnation proceedings, see rule 71A, Title 28, Appendix, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 sections 81e, 159a, 231b, 242, 263, 403i, 423k, 423n, 425a, 430a, 430k, 430u, 430nn, 433c, 433h, 447b, 449, 450m, 450p, 459a; title 25 section 500a; title 42 sections 1532, 2222; title 43 section 1522; title 49 section 1344; title 50 section 167f.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 43-1624 of the District of Columbia Code.

§ 258. Omitted

CODIFICATION

Section, acts Aug. 1, 1888, ch. 728, § 2, 25 Stat. 357; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167, which in con-

nection with condemnation proceedings, required conformity, as near as might be, to state practice and pleading has been omitted as superseded by Rule 71A of the Federal Rules of Civil Procedure, Title 28, Appendix, Judiciary and Judicial Procedure.

§ 258a. Lands, easements, or rights of way for public use; taking of possession and title in advance of final judgment; authority; procedure

In any proceeding in any court of the United States outside of the District of Columbia which has been or may be instituted by and in the name of and under the authority of the United States for the acquisition of any land or easement or right of way in land for the public use, the petitioner may file in the cause, with the petition or at any time before judgment, a declaration of taking signed by the authority empowered by law to acquire the lands described in the petition, declaring that said lands are "thereby taken for the use of the United States. Said declaration of taking shall contain or have annexed thereto—

(1) A statement of the authority under which and the public use for which said lands are taken.

(2) A description of the lands taken sufficient for the identification thereof.

(3) A statement of the estate or interest in said lands taken for said public use.

(4) A plan showing the lands taken.

(5) A statement of the sum of money estimated by said acquiring authority to be just compensation for the land taken.

Upon the filing said declaration of taking and of the deposit in the court, to the use of the persons entitled thereto, of the amount of the estimated compensation stated in said declaration, title to the said lands in fee simple absolute, or such less estate or interest therein as is specified in said declaration, shall vest in the United States of America, and said lands shall be deemed to be condemned and taken for the use of the United States, and the right to just compensation for the same shall vest in the persons entitled thereto; and said compensation shall be ascertained and awarded in said proceeding and established by judgment therein, and the said judgment shall include, as part of the just compensation awarded, interest at the rate of 6 per centum per annum on the amount finally awarded as the value of the property as of the date of taking, from said date to the date of payment; but interest shall not be allowed on so much thereof as shall have been paid into the court. No sum so paid into the court shall be charged with commissions or poundage.

Upon the application of the parties in interest, the court may order that the money deposited in the court, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in said proceeding. If the compensation finally awarded in respect of said lands, or any parcel thereof, shall exceed the amount of the money so received by any person entitled, the court shall enter judgment against the United States for the amount of the deficiency.

Upon the filing of a declaration of taking, the court shall have power to fix the time within which and the terms upon which the parties in possession shall be required to surrender pos-

* "Prevailing rate on government bonds" is standard used today.

NAME: Margaret S Davis DATE: 23 Jan 85

ADDRESS: 816 Florence, Helena MT 59609

PHONE: 443-3487

REPRESENTING WHOM? League of Women Voters

APPEARING ON WHICH PROPOSAL: SB 114

DO YOU: SUPPORT? AMEND? X OPPOSE?

COMMENT: We support the thrust of
SB 114 for uniform hours, but the
bill must be amended to clarify
the law properly or more confusion
will result. We favor amending
Sec 13 rather than the School laws.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

CLERICAL

Date: 1/23/85
Time: 4:20 PM

Senate Bill 114

In accordance with Joint Rule 3-7(b) the following clerical errors may be corrected:

Standing Comm. Rep. of 1/23
Title
#1 - following: "~~20~~-20-106"
insert ", "

6

Comma not added

1/24/85
3:05 P.M.

John Haffey
Sponsor

Secretary of Senate
or
Chief Clerk

CO 85
Legislative Council

STANDING COMMITTEE REPORT

January 23,

19 85

MR. PRESIDENT

We, your committee on **STATE ADMINISTRATION**having had under consideration **SENATE BILL** No. **114****first** reading copy (**white**)

color

SCHOOL ELECTION POLL HOURSRespectfully report as follows: That **SENATE BILL** No. **114**
be amended as follows:

1. Title, line 6.
Following: "SECTIONS"
Insert: "13-1-106,"

2. Page 1, line 10.
Following: line 9
Insert: "Section 1. Section 13-1-106, MCA, is amended to read:
"13-1-106. Time of opening and closing of polls for all elections.
(1) Polls must be open from 7 a.m. to 8 p.m., except polling places
having fewer than 200 registered electors, which must be open from
noon to 8 p.m. or until all registered electors in any precinct
have voted, at which time the polls shall be closed immediately.
(2) When an election held under 13-1-104(3) and a school election
are conducted in the same polling place, the polls shall be opened
and closed at the times set for the school election, as provided
in 20-26-106."

Renumber: subsequent sections

3. Page 1, line 16.
Strike: "a"
Insert: "an"

4. Page 1, line 16.
Following: "or"
Strike: "special"

5. Page 1, line 16.
Following: "election"
Strike: "for another"

XXXXXX Insert: "held by a"

XXXXXX

~~XXXXXXXXXXXXXXXXXXXX~~~~XXXXXXXX~~

Continued

Chairman.

January 23, 19 85

6. Page 1, line 17.

Following: "subdivision"

Strike: ", as required by"

Insert: "under"

7. Page 1, line 17.

Following: "13-1-104(3)"

Insert: "and at the same polling place"

AND AS AMENDED

DO PASS

STANDING COMMITTEE REPORT

.....JANUARY 23,..... 19 85.....

MR. PRESIDENT

We, your committee on.....**STATE ADMINISTRATION**.....

having had under consideration.....**SENATE JOINT RESOLUTION** No. **8**.....

first reading copy (**white**)
color

JOINT RESOLUTION URGING REVISION OF FEDERAL CONDEMNATION LAWS

Respectfully report as follows: That.....**SENATE JOINT RESOLUTION**..... No. **8**.....

DO PASS

~~XXXXXXXXXX~~

.....*John M. [unclear]*.....
Chairman.

WMP