

HCS HB 1944 -- EMINENT DOMAIN

SPONSOR: Pratt (Hobbs)

COMMITTEE ACTION: Voted "do pass" by the Committee on Judiciary by a vote of 10 to 1.

This substitute changes the laws regarding the use of eminent domain. The power of eminent domain will be vested in governmental entities or agencies whose governing body is elected or appointed by elected officials, private utility companies, public utilities, rural electric cooperatives, municipally owned utilities, pipelines, railroads, and common carriers. In its main provisions, the substitute specifies that:

(1) Private property may only be taken through the use of eminent domain after determining blight of the property or that the taking is for a public use and not without just compensation. Compensation will be determined by considering the comparable sales in the area, current use of the property, fair market value of the property based on its highest and best use, availability of comparable property in the area, and any other relevant factors;

(2) Farmland will not be determined to be blighted;

(3) At least 30 days prior to initiating negotiations to acquire a property interest, the condemning authority must give actual notification to the owner of record identifying the interest in real property to be acquired; the purpose for which the property is being condemned; an appraisal paid for by the condemning authority if the damages due to the taking are greater than \$15,000; a statement of the property owners rights including the right of the property owner to seek legal counsel; and the right to make a counteroffer and engage in negotiations, to obtain the landowner's own appraisal, to contest the condemnation proceeding, and to have just compensation determined preliminarily by court-appointed condemnation commissioners and, ultimately, a jury. The jury will consider the same factors as those used for determining just compensation when blighted property or property for a public use is taken. If the property owner employs an appraiser to appraise the property to be acquired, the appraisal must be delivered to the condemning authority within 60 days;

(4) A written offer must be presented to the property owners of record at least 30 days before filing a condemnation petition;

(5) Before a condemning authority may proceed with condemnation, there must be a court determination that proper and timely notice

was given to all property owners, an initial offer no lower than the appraisal amount was given, and that the landowner was given an opportunity to obtain his or her own appraisal from a state-licensed or state-certified appraiser of his or her choice. If the court finds good faith negotiations have not taken place, the court must dismiss the condemnation petition and order the condemning authority to reimburse the owner for his or her actual reasonable attorneys fees and costs;

(6) The court may order payment of the landowner's legal fees and expenses and award damages accruing as a direct and proximate result of the pendency of the condemnation if the condemning authority abandons condemnation prior to the final judgment of the court;

(7) Unless it is a total taking, a landowner may propose an alternative location on his or her property which must be considered by the condemning authority;

(8) No condemning authority will acquire private property through the process of eminent domain for solely economic purposes;

(9) The condemning authority must individually consider each parcel of property in the area with regard to whether the property is blighted. If the condemning authority finds that the area is predominately blighted, it may proceed with condemnation of any parcel in the area;

(10) Property interests acquired through eminent domain by private utility companies, public utilities, rural electric cooperatives, municipally owned utilities, or common carriers are fixed and determined by the particular use for which the property was acquired. Any expanded use of the property will require additional eminent domain proceedings to acquire the additional rights;

(11) An Office of Ombudsman will be established in the Office of the Governor to assist citizens seeking information regarding the condemnation process and procedures;

(12) Any financial gain to the property owner arising from a condemnation action will be deducted from the taxpayer's federal adjusted gross income;

(13) Any easements that are acquired after the effective date of the substitute that are not used in whole or in part for the purpose for which they were acquired for a period of 15 consecutive years must be vacated by the holder of the easement upon written request from the then-owner of record of the

burdened property. If the holder of the easement does not vacate the easement within 90 days after receiving the request, the landowner has the right to petition the circuit court to obtain vacation of the easement and the holder has the right to petition the circuit court to grant an extension of 15 years; and

(14) Any legislative determination that an area is blighted, substandard, or insanitary must not be arbitrary or capricious and must be supported by substantial evidence. Upon the filing of any appeal of a legislative determination of blight, the circuit court must give preference in the order of hearing to all other cases, except elections cases, to the extent necessary to conclude the case within 30 days of having been filed. Any subsequent appeals must be given preference and concluded in an expedited manner similar to the manner set forth for a hearing in circuit court.

FISCAL NOTE: No impact on General Revenue Fund in FY 2007, FY 2008, and FY 2009. Estimated Cost on Other State Funds of Unknown in FY 2007, FY 2008, and FY 2009.

PROPONENTS: Supporters say that the bill provides protections for future generations of landowners and protects property owners' rights without stopping development in the state. The definition and characterization of blight will not be changed; however, the bill will not allow any condemnation by eminent domain for purely economic purposes. Eminent domain should be a last resort for condemning authorities and not a tool for inexpensive acquisition of land. Abuse of condemnation proceedings for acquisition of land continues to be a major problem in this state.

Testifying for the bill were Representative Hobbs; Missouri Family Network; Missouri Baptist Convention, Christian Life Commission; Missouri Farm Bureau; Bill McLaren; Riley Godfrey; Rob Korff; David Reigel; Maxine Johnson; John Garagnani; Carter Freeman; Doug McDaniel; Phillis Hardy; Fred O'Neill; Sara Barwinski; William Peppes; Jilly Kelly-Miles; Loren Keen; Clifford Dronzda; Byron Baker; Claire Kramer; Pamela Schaefer; Stephanie Reynolds; Karen Smith; and Greg Tumlin.

OPPONENTS: Those who oppose the bill say that it has numerous unintended consequences that, left unrevised, will create problems for municipalities and governmental authorities in acquiring land by eminent domain. The bill allows for punitive damages which will discourage acquisition of land for public use projects. Just compensation, which includes payment for heritage value and anticipated profits, are unfair and will greatly increase the fiscal burden for governmental authorities and taxpayers. The necessity for eminent domain is clear. In some

situations, the collective need outweighs individual rights. The bill makes procedural changes for condemnors; and it is, therefore, inappropriate to place substantive limitations, such as a redefinition of blight, on eminent domain proceedings. The right of reversion will penalize and cloud the ownership interests in the property.

Testifying against the bill were Gregory Smith, Forward Metro HBA of St. Louis; Union Electric Company; Association of Missouri Electric Cooperatives; Honorable Kay Barnes, Mayor of the City of Kansas City; City of St. Louis; Missouri Railroad Association; Union Pacific Railroad; Honorable T. R. Carr, Mayor of the City of Hazelwood; Honorable Pat Kelly, Mayor of the City of Brentwood; County Commissioners Association of Missouri; City of Independence; Missouri Municipal League; Department of Transportation; Associated General Contractors of Missouri Spencer Thomson; Kathy Tripp; and Stella Erundu.

OTHERS: Others testifying on the bill say that it will be ineffective unless it addresses assemblage rights. The economic reality of condemnation makes being able to take multiple properties and adjoining properties for public use necessary. The bill must promote a business-friendly environment that will encourage development of areas that are blighted.

Others testifying on the bill were Boone County Farm Bureau; TransCanada; St. Louis County Municipal League; Missouri Chamber of Commerce and Industry; Greater Kansas City Local Initiatives Support Corporation; Robert Denlow; William Peppes; JoAnn Bailey; Reverend Eugene Fowler; Jim Roos; and Ron Calzone.

Alex Curchin, Legislative Analyst