

CCS SS SCS HCS HB 1944 -- EMINENT DOMAIN

This bill 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 bill:

(1) Specifies that private property may only be taken through the use of eminent domain after determining blight of the property or the taking is for a public use and not without just compensation;

(2) Defines "fair market value," "heritage value," "farmland," and "homestead taking";

(3) Specifies that farmland will not be determined to be blighted;

(4) Requires that for all condemnations filed after December 31, 2006, just compensation for condemned property will be determined by fair market value, homestead taking which is fair market value multiplied by 125%, or heritage taking which is fair market value multiplied by 150%;

(5) Specifies that all displaced residential individuals eligible for assistance will receive a \$1,000 fixed moving expense payment or the actual reasonable costs of relocation not including the cost of replacement property. All displaced businesses eligible for relocation assistance can choose to receive a \$3,000 fixed moving expense or the actual costs of moving and up to \$10,000 for reestablishment expenses;

(6) Requires the circuit judge presiding over the condemnation to determine after the filing of the commissioners' report whether a homestead taking has occurred and whether heritage value is to be paid to the property owner;

(7) Specifies that at least 60 days prior to initiating negotiations to acquire a property interest, the condemning authority must give a written notice to the owner of record identifying the interest in real property to be acquired; the purpose for which the property is being condemned; and a statement of the property owner's rights including the right to seek legal counsel, 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 obtains his or her own appraisal, it must be delivered to the condemning authority within 60 days from the date of the notice;

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

(9) Requires that before a condemning authority may proceed with a 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 attorney fees and costs;

(10) Requires the court to 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;

(11) Specifies that no condemning authority can acquire private property through the use of the power of eminent domain for solely economic development purposes and defines "economic development" to mean a use of a specific piece of property which would provide an increase in the tax base, tax revenues, employment, and general economic health for any political subdivision;

(12) Requires the condemning authority to individually consider each parcel of property in an area with regard to whether the property is blighted. If the condemning authority finds a preponderance of the area is blighted, it may proceed with the condemnation of any parcel in the area;

(13) Specifies that 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;

(14) Establishes an Office of Ombudsman in the Office of Public Counsel within the Department of Economic Development to assist citizens seeking information regarding the condemnation process and procedures;

(15) Specifies that blanket easements will be void as against public policy and will be unenforceable;

(16) Allows any financial gain to the property owner arising from a condemnation action to be deducted from the taxpayer's federal adjusted gross income when calculating his or her Missouri adjusted gross income;

(17) Specifies that any easements acquired after December 31, 2006, and abandoned in whole for a period in excess of 10 years may be vacated by a court of competent jurisdiction and upon the property owner paying monetary consideration equal to the original consideration paid by the easement holder. The holder of the easement must be a party to the action and may be allowed to maintain the easement upon a showing, in good faith, that the holder plans to make future use of the easement; and

(18) Specifies that within 30 days of the initial notice by the condemning authority, a landowner may propose an alternative location on his or her property which must be considered by the condemning authority.