

HCS HB 1085 -- EMINENT DOMAIN

SPONSOR: Townley

COMMITTEE ACTION: Voted "do pass" by the Committee on Conservation and Natural Resources by a vote of 13 to 5.

This substitute makes changes to the laws regarding the condemnation of real property. The substitute:

- (1) Requires the condemning entity to declare the exact location of the property desired and the specific intended use of the property;
- (2) Prohibits condemnation of property for private development purposes, with certain exception;
- (3) Prohibits the condemning entity from using the property for any purpose other than its original intended purpose;
- (4) Prohibits the condemning entity from transferring the property to another entity;
- (5) Entitles the property owner to have the right to buy back any condemned property that the condemning entity does not use for 10 years;
- (6) Requires the condemning entity to pay for all reasonable and necessary costs of litigation;
- (7) Establishes a method by which the court must appoint commissioners for condemnation proceedings. The condemning entity will select a commissioner, the landowner will select a commissioner, and the two parties must agree on an independent appraiser to serve as the third commissioner. If they cannot agree on a third commissioner, the court will appoint one; and
- (8) Requires the commissioners and jury in condemnations cases to consider a property owner's loss or restriction of highway access in determining the damages due that property owner.

The substitute exempts from the new condemnation process and restrictions:

- (1) Condemnations made by state agencies and most utility entities;
- (2) Condemnations within the cities of St. Louis or Kansas City, and the counties of St. Louis, Jackson, Cass, Platte, or Clay; and

(3) Condemnations which are part of any project involving tax increment financing, pursuant to Chapter 99, RSMo; industrial development, pursuant to Chapter 100; or urban redevelopment, pursuant to Chapter 353.

FISCAL NOTE: No impact on General Revenue Fund in FY 2005, FY 2006, and FY 2007. Total Estimated Cost on Other State Funds of Unknown in FY 2005, FY 2006, and FY 2007. Could exceed \$100,000 in any given year.

PROPOSERS: Supporters say that a recent national study found that Missouri was one of the worst states in the country for eminent domain abuse. Cities and counties force private property owners out of their homes, invoking the power of eminent domain, and then the government hands the property over to a developer who gets rich building on the land. Much of this abuse comes in the form of tax increment financing districts where a city will declare an entire neighborhood blighted so it can be condemned. The definition of "blighted" is so broad that it doesn't serve as a definition at all. Any building in any area of the state can meet the definition making the power of eminent domain clearly needed and useful. In addition, in cases where the power of eminent domain is valid, such as widening a road, the condemning entity often does not offer fair market value for the property. The condemning entity knows that the property owner has to accept its offer or face huge attorney bills. In many cases, the entity doesn't really try to negotiate with the property owner; and the property owner will just receive a letter from the condemning entity saying the entity is going to acquire the owner's property. A representative from the entity then shows up at the owner's home and says "It's a done deal. You can fight it in court, but you'll lose." The entity will typically offer a fraction of the fair market value of the property. Most property owners don't fight it in court, and those who do wish they hadn't, once they pay all the attorney fees.

Testifying for the bill were Representative Townley; Missouri Family Network; Rolla Standing Our Ground Committee; Bob Bateman; Floyd Huffman; O'Fallon Old Town Preservation Committee; Missouri Cattlemens Association; Kenneth Thomas; Missouri Farm Bureau; Concerned Citizens for Family Farms; Warren Dean; Doug McDaniel; Claudia Baker; and Ralph Kobolt.

OPPOSERS: Those who oppose the bill say it puts too many restrictions on condemning entities. Not being able to lease land to other parties, such as farmland that could be planted in crops for a year or two, would cause property to remain idle unnecessarily. A utility could not transfer an easement to another utility when it needs to sell part of its territory or when the entire utility is purchased. This would be a serious

impediment to providing utilities for future development. The majority of property acquired through the power of eminent domain is done without the need to go to court. Sometimes, however, a property owner won't sell at any price, and that's where the power of eminent domain is needed. Otherwise, property owners could hold up a project that is needed for the public good. There are isolated instances of abuse, particularly with tax increment financing projects, but that needs to be addressed at the local level. If people don't approve of what their city council is doing, then they should vote them out of office. The bill would prevent eminent domain to be used for private development purposes, but it's unclear what kind of projects would be considered private or public development. For example, the bill could prevent any utility from condemning property, prevent all urban redevelopment projects, and essentially end the Tax Increment Financing and Missouri Downtown Economic Stimulus Act programs.

Testifying against the bill were AmerenUE; Missouri Energy Development Association; Missouri Land Title Association; Missouri Municipal League; City of Kansas City; Home Builder's Association of Greater St. Louis; St. Louis County; St. Louis Regional Commerce Growth Association; and Department of Transportation.

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