

# SENATE BILL REPORT

## SB 6125

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As Passed Senate, February 17, 2014

**Title:** An act relating to eminent domain.

**Brief Description:** Concerning eminent domain.

**Sponsors:** Senators Benton, Sheldon, Braun, Angel, Dammeier, O'Ban, Schoesler, Padden, Becker, Bailey and Honeyford.

**Brief History:**

**Committee Activity:** Law & Justice: 1/22/14, 2/03/14 [DP, DNP].

Passed Senate: 2/17/14, 25-23.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pearson and Roach.

**Minority Report:** Do not pass.

Signed by Senators Kline, Ranking Member; Darneille and Pedersen.

**Staff:** Tim Ford (786-7423)

**Background:** Eminent domain is the sovereign power of the state to take private property for public use. A condemnation is a judicial proceeding to exercise eminent domain powers. A municipal corporation's power to condemn is delegated to it by the Legislature and must be conferred in express terms or necessarily implied. Statutes that delegate the state's sovereign power of eminent domain to its political subdivisions must be strictly construed [*In re Seattle* (1981)].

In *King County v. Seattle* (1966), the Washington State Supreme Court strictly construed state law authorizing counties to condemn land and property for public use within their boundaries, holding that it does not give the right to condemn land belonging to the state or its subdivisions, regardless of the use to which it will be put. More recently, the Ninth Circuit federal court held that the city of Idaho Falls lacked power to exercise eminent domain extraterritorially where those powers had not been expressly granted by the state, and such powers could not be fairly implied, and were not essential [*Alliance v. City of Idaho Falls* (2013)].

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Summary of Bill:** The taking of private property for public or private use where the property will be transferred to an out-of-state governmental entity's use or possession is prohibited.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: CTRAN, a local agency from Clark County, Washington, contracted with TRIMET, an Oregon transportation agency. The contract requires CTRAN to use its eminent domain powers to condemn private property in Washington State and transfer it to TRIMET to build a light rail project as a component of replacing the I-5 bridge over the Columbia River. It is questionable whether this is even legal given a recent Ninth Circuit court ruling and it may not be constitutional. This bill would prevent CTRAN from using its eminent domain powers for an Oregon agency. The bill will prevent litigation. The bill provides basic fairness by protecting property rights of Washington citizens. The project EIS estimates that it will reduce travel time by less than a minute for southbound commutes.

CON: The bill would prevent an Oregon plan to rebuild the I-5 bridge with light rail high capacity transit. The project is a local project and there is no state interest. Washington citizens would pay tolls and benefit the most from reduced travel times. Private property rights are not being compromised by the use of eminent domain.

**Persons Testifying:** PRO: Senator Benton, prime sponsor; Glen Morgan, Freedom Foundation.

CON: Jeff Hamm, Executive Director & CEO of CTRAN.