
Judiciary Committee

HB 3264

Title: An act relating to eminent domain.

Brief Description: Changing provisions relating to condemnation proceedings.

Sponsors: Representatives Springer, Rodne, Strow, Ericks, Buri, Jarrett and Hunter.

Brief Summary of Bill
<ul style="list-style-type: none">• Provides that an entity exercising the power of eminent domain must document its consideration of alternatives to condemnation;• Expands the amount and type of land owner expenses that a condemning authority must reimburse.

Hearing Date: 1/31/06

Staff: Bill Perry (786-7123).

Background:

Eminent domain is the term used to describe the power of a government to take private property for public use. The power has been recognized by federal and state courts as inherent and necessary for the existence of government. Because it is an inherent power, express constitutional or statutory authority is not necessary to create it. Rather, constitutions and statutes define, restrict, and delegate the power of eminent domain and provide a procedural framework for its exercise. The power of eminent domain extends to all types of property, although it is most often associated with the taking of real property, such as acquiring property to build a highway. A "condemnation" is the judicial proceeding used for the exercise of eminent domain.

Both state and federal statutes have also delegated the power of eminent domain to some corporate entities. Common carriers and public utilities such as railroads, telephone companies and pipeline companies have been given the authority to condemn property.

Both federal and state constitutions require the paying of "just compensation" to the owner of property that is condemned. Under state law, at least 30 days before any trial of a condemnation action, the condemnor must make a written statement indicating how much compensation the condemnor would pay in a pre-trial settlement of the case.

State law also allows a property owner to recover some expenses in addition to just compensation for the property. If a trial is held and the condemnor has failed to make the required pre-trial offer, or if an offer was made and the condemnee has received at least 10% more at trial than the condemnor offered before trial, then the condemnee is entitled to recover reasonable attorney fees and expert witness fees. However, if the condemnor has requested immediate possession of the property following condemnation, the condemnee must comply with the request in order to recover the fees.

If a condemnation trial results in denial of the condemnation, or if the condemnor abandons the attempt to condemn the property, the property owner is entitled to reasonable attorney fees and expert witness fees.

In addition a provision in state statute requires payment of certain expenses incurred by a land owner facing possible condemnation of his or her land. This provision applies to any parcel of real property that is acquired either by eminent domain or "by consent under threat" of the exercise of eminent domain. The expenses to be paid by the condemnor are those "actually and reasonably incurred" in "evaluating the condemnor's offer to buy." This provision is sometimes referred to as an assessor's fee provision. The condemnor is liable for no more than \$750 of such expenses. This amount was last adjusted by the Legislature in 1999 when it was raised from \$200.

Summary of Bill:

The Legislature recognizes that property owners are sometimes disadvantaged in dealing with a condemning authority, whether governmental or corporate.

At least 30 days before a condemnation trial, the condemnor must serve on the condemnee a statement regarding the consideration of alternatives to condemnation. The statement is to document the condemnor's consideration of and reasons for rejecting alternatives. Any reasonable alternative suggestion made by the condemnee at least 60 days before trial must be considered.

The \$750 limit on recoverable expenses incurred in assessing a condemnor's offer is removed. Reasonable fees that may constitute such expenses are explicitly identified to include, but not be limited to, the fees of appraisers, attorneys, architects and engineers. The expenses must be paid regardless of what the outcome of a trial is, or whether a condemnation trial is held.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.