

SENATE BILL REPORT

2ESHB 2016

As Reported By Senate Committee On:
Judiciary, February 29, 2008

Title: An act relating to eminent domain.

Brief Description: Changing provisions pertaining to eminent domain.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Springer, Lantz, Wallace, Seaquist, Sullivan, Moeller, Lovick, Takko, Kessler, Morrell, Rolfes, Ericks, VanDeWege, Goodman, Simpson, Linville and Ormsby).

Brief History: Passed House: 2/13/08, 96-1.

Committee Activity: Judiciary: 2/26/08, 2/29/08 [DPA].
Transportation: 3/3/08.

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended.

Signed by Senators Kline, Chair; Tom, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Hargrove, McDermott, Roach and Weinstein.

Staff: Lidia Mori (786-7755)

SENATE COMMITTEE ON TRANSPORTATION

Staff: Hayley Gamble (786-7452)

Background: Eminent domain is the term used to describe the power of a government to take private property for public use. 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.

The Fifth Amendment to the U.S. Constitution provides that ". . . private property [shall not] be taken for public use, without just compensation." Article I, section 16 of the State Constitution provides, in part: "Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches on or across the lands of others for agricultural, domestic, or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having been first made . . . which compensation shall be ascertained by a jury . . . Whenever an attempt is made to take private

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property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such, without regard to any legislative assertion that the use is public..." Other constitutional provisions grant eminent domain powers to telephone companies, make the property of corporations subject to eminent domain to the same extent as the property of individuals, and declare the use of water for irrigation, mining, and manufacturing to be a "public use."

There are more than 300 statutory sections in the Revised Code of Washington dealing with eminent domain powers. Some of the statutes confer eminent domain powers on governmental entities ranging from counties to mosquito control districts, and give the power of eminent domain to railroads, electrical utilities, and pipeline companies. A number of statutes provide for recovering costs under particular circumstances in eminent domain proceedings. One of the provisions requires the condemnor to reimburse the condemnee for reasonable fees incurred in evaluating the condemnor's offer of compensation for the property. There is a cap of \$750 on the fees that may be recovered. At least two statutes require that the prior owner of condemned property be given the opportunity to buy back the property.

Summary of Bill (Recommended Amendments): At the time the condemnor makes its initial written offer of just compensation to a property owner, the condemnor must provide the owner with a written statement documenting its consideration of, and reasons for rejecting, alternatives to the condemnation sought. The condemnor also must give thorough consideration to any reasonable alternatives proposed by the owner up to the time the condemnor issues its notice of planned final action, or up to 90 days after the condemnor provides the initial written offer of just compensation, whichever period is longer. The condemnor must provide a written response to the owner regarding its decisions on the proposed alternatives, including any reasons for rejecting an alternative, prior to taking final action. The condemnor must pay the reasonable expenses actually incurred for evaluation of a condemnor's offer to buy a property, but it is not to exceed the lesser of: (1) ten thousand dollars; or (2) 1 percent of the value of the parcel or \$750, whichever is greater. Reasonable expenses do not include costs incurred to evaluate or propose alternatives to the condemnation or to evaluate or challenge the legality of the condemnation process or project.

When real property is acquired through condemnation or under the threat of condemnation, the owner of the property retains an option to repurchase the property. If a condemnor decides within twenty years of acquiring the property that it is no longer necessary for a public purpose and should be sold, a prior owner must be notified of the impending sale. The prior owner may repurchase the property for the lesser of the current appraised value of the property less the earnest money or deposit, or the compensation price paid at condemnation adjusted for inflation. Any repurchase price is to be adjusted for the value of any physical changes to the property as determined by an appraiser. The option to repurchase property that was condemned does not apply if there is a federal prohibition or if it would result in reduced federal funding. The repurchase option also does not apply if transfer of title to the property to another governmental entity is required as part of the project or public purpose for which the property was acquired and the sale of the property to a public entity is for a public purpose.

All public and private entities with the power of eminent domain, with some exceptions, are prohibited from condemning property solely for the purpose of: increasing tax revenues or the

tax base; increasing employment; or transferring private property to another private person or entity. This prohibition does not apply to the use of eminent domain by a county, city, or town under the Community Renewal Law or the chapter of law pertaining to condemnation of blighted property. Port districts, public service companies, and common carriers are also exempted from this prohibition.

EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Amendments): The condemnor must accept for consideration all reasonable alternatives submitted by the owner up to 90 days after the condemnor provides written notice to acquire the property to the property owner. Reasonable alternatives must be related to the specific property to be condemned and must not include alternatives to the overall project for which the condemnation is sought. The standard of judicial review of public use and necessity in condemnation actions is not affected by the condemnor's consideration of other alternatives. The condemnor is required to pay the reasonable expenses actually incurred for evaluation of a condemnor's offer to buy a property, but it is not to exceed the lesser of \$10,000 or 1 percent of the value of the parcel or \$750, whichever is greater. Reasonable expenses do not include costs incurred to evaluate or propose alternatives to the condemnation or to evaluate or challenge the legality of the condemnation process or project. The option to repurchase property that was condemned does not apply if there is a federal prohibition or if it would result in reduced federal funding. The repurchase option also does not apply if transfer of title to the property to another governmental entity is required as part of the project or public purpose for which the property was acquired and the sale of the property to a public entity is for a public purpose. Market rate is defined as two percentage points above the equivalent coupon issue yield of the average bill rate for twenty-six week treasury bills. Eminent domain cannot be solely related to economic development, rather than substantially related.

Appropriation: None.

Fiscal Note: New fiscal note requested February 23, 2008.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Second Engrossed Substitute: PRO: The Attorney General's eminent domain task force met several times last summer and this bill has gone through at least 3 years of revisions. It basically does four things: (1) requires due diligence on the part of the condemnor regarding consideration of alternatives to condemnation; (2) requires reimbursement of appraisal fees but it doesn't require reimbursement of attorney fees; (3) creates a repurchase option; and (4) includes prohibitions against taking private property substantially for the purpose of increasing tax revenues or the tax base, increasing employment, or transferring the private property to another private person, with certain exemptions. This bill has provisions that make condemnation more fair. The repurchase option should be an automatic reversion to the owner. It is often not necessary to take property, it can be cleaned up via nuisance and other laws. The right to suggest reasonable alternatives that must be considered goes a long way towards leveling the field.

OTHER: If the purchase of a property being condemned is done with some federal money, the surplusage has to be approved by the federal government and that may not occur. In those

cases, the right to repurchase is meaningless. There should be language in the bill saying that the alternatives that are suggested cannot be to the overall project. There is no methodology in the bill to determine the value of the repurchase option. Perhaps it should be a set percentage. There should be a definition of "market interest." The reimbursement for the appraisal fees should be for certified or licensed appraisers under 18.40 RCW.

Persons Testifying: PRO: Representative Springer, prime sponsor; William Maurer, Attorney General, Eminent Domain Task Force; Rich Eggleston; Dan Wood, Washington Farm Bureau; Tim Ford, Office of the Attorney General.

OTHER: Julie Murray, Washington State Association of Counties; Gerry Gallinger, Washington State Department of Transportation; Jim Irish, Appraisers Coalition of Washington; Craig Johnson, Eminent Domain Task Force.