

# SENATE BILL REPORT

## SB 5189

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As Reported by Senate Committee On:  
Law & Justice, February 18, 2015

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

**Brief Description:** Concerning eminent domain.

**Sponsors:** Senators Benton and Angel.

**Brief History:**

**Committee Activity:** Law & Justice: 2/16/15, 2/18/15 [DPS, DNP].

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 5189 be substituted therefor, and the substitute bill do pass.

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

**Minority Report:** Do not pass.

Signed by Senators Pedersen, Ranking Minority Member; Darneille and Kohl-Welles.

**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 extra-territorially 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 (Recommended Substitute):** 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.

The Department of Transportation may work with adjacent states for the maintenance, alteration, construction, or reconstruction of transportation infrastructure between the adjoining states if authorized by law. Such agreements may also allow for the acquisition of temporary property rights for equipment storage, haul routes, project staging, and the storage of necessary supplies.

**EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (Recommended Substitute):** The Department of Transportation may work with adjacent states for the maintenance, alteration, construction, or reconstruction of transportation infrastructure between the adjoining states if authorized by law. Such agreements may also allow for the acquisition of temporary property rights for equipment storage, haul routes, project staging, and the storage of necessary supplies.

**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 on Original Bill:** PRO: In 2014 Clark County transit (CTRAN) entered into an agreement with an Oregon transportation agency (TRIMET). The agreement made CTRAN subordinate to TRIMET, but TRIMET is going bankrupt. Additionally, CTRAN may have to pay millions to TRIMET in penalties if the contract is not honored.

CON: The Port of Vancouver has maintenance agreements with out-of-state entities for dredging the Columbia River for decades. This bill should not impact dredging.

OTHER: The Washington Department of Transportation would be hindered from maintaining border crossings through cooperative projects with other states. These agreements are for routine maintenance.

**Persons Testifying:** PRO: Senator Benton, prime sponsor; Scott Roberts, Evergreen Freedom Foundation.

CON: Rick Wickman, Port of Vancouver; Jack Burkman, city of Vancouver.

OTHER: Allison Camden, WA Dept. of Transportation.