

# SENATE BILL REPORT

## SHB 1458

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As Reported By Senate Committee On:  
Judiciary, March 21, 2007

**Title:** An act relating to adequate notice to property owners regarding acquisition of property for public purposes through the exercise of eminent domain.

**Brief Description:** Requiring notice to property owners before condemnation decisions.

**Sponsors:** House Committee on Judiciary (originally sponsored by Representatives VanDeWege, Kessler, Rodne, Appleton, Ahern, Curtis, Kenney, Clibborn, Morrell, P. Sullivan, Eickmeyer, Armstrong, Buri, Chandler, Ericksen, Hinkle, Condotta, Anderson, Eddy, Goodman, Kelley, Haler, McCune, Kretz, Kagi, Ericks, Warnick, Pedersen, Bailey, Newhouse, McDonald, Priest, Roach, Strow, Green, Campbell, Hunter, Takko, Sells, Springer, McCoy, Upthegrove, Williams, Moeller, Ormsby, Pearson, Haigh, Linville, Conway, Dickerson, Dunn, Hasegawa, Rolfes, Ross and Lantz; by request of Governor Gregoire and Attorney General).

**Brief History:** Passed House: 3/07/07, 96-0.

**Committee Activity:** Judiciary: 3/20/07, 3/21/07 [DP].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass.

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

**Staff:** Dawn Noel (786-7472)

**Background:** Concern exists regarding the extent to which a government entity must notify a landowner of the entity's pending decision to condemn his or her land. Current law provides that landowners must receive notice of the hearing in which a judge or jury will determine compensation, but this hearing occurs after the entity has already decided to condemn the land. In *Central Puget Sound Regional Transit Authority v. Miller*, 156 Wn.2d 403 (2006), a majority of the Washington Supreme Court stated that landowners are not legally entitled to personal notice of the public meeting in which the necessity of a condemnation will be considered.

**Summary of Substitute Bill:** State agencies, counties, cities, school districts, certain corporations and other entities with condemnation authority must provide landowners a minimum of 15 days notice before the entity's final action regarding condemnation of specific property. The notice must contain a general description of the property, and specify that

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condemnation will be considered during the final action or public meeting. The notice must also describe the date, time, and location of the final action at which the condemnor will decide whether to authorize the condemnation of the property.

Notice must be issued by certified mail to all property owners of record. Notice must also be given by publication in the legal newspaper with the largest circulation in the jurisdiction in which the property is situated and, if different, in the newspaper regularly used by the condemning entity for notices. As to those landowners whose residences are unascertainable after a diligent inquiry, newspaper publication will be considered sufficient notice.

In a condemnation action in which a condemnee alleges insufficient notice, the court may determine whether the condemnor made a diligent attempt to provide sufficient notice. Lack of sufficient notice must render subsequent proceedings void as to the person not served. A condemnor can cure insufficient notice by providing an additional sufficient notice prior to taking a new final action, and filing a new petition for condemnation as to the property owner who received insufficient notice.

For local governments, "final action" is defined by referencing the Open Meetings Act and means a collective decision, or an actual vote by a majority of the members of a governing body regarding a motion, proposal, resolution, order, or ordinance.

For state agencies, "final action" is to be defined by the Attorney General, who is directed to ensure that owners have an opportunity for comment before an agency makes a final decision to authorize the condemnation of a specific piece of property.

For all other entities, "final action" means a public meeting at which the entity informs potentially affected property owners about the scope and reasons for a potential condemnation.

**Appropriation:** None.

**Fiscal Note:** Available.

**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: We support this bill. It's in line with our stance on private property rights. Procedures associated with eminent domain need to be addressed. Once a decision to condemn property is made, it's final.

**Persons Testifying:** PRO: Phil Harlan, Washington Realtors; Greg Overstreet, Attorney General's Office; Kaleen Cottingham, Futurewise; Ken Miller, citizen.