
Judiciary Committee

HB 1392

Title: An act relating to eminent domain.

Brief Description: Changing provisions pertaining to eminent domain.

Sponsors: Representatives Springer, Driscoll, Kessler, Probst, Ericks, Sullivan, Dunshee, Takko, Blake, McCoy, Eddy, Clibborn, Dickerson, Williams, Sells, Goodman, Kenney and Moeller.

Brief Summary of Bill

- Requires a condemnor to consider reasonable alternatives to condemnation.
- Increases the cap on reimbursable expenses incurred in evaluating a condemnor's offer.
- Allows the former owner to buy back the condemned property if it is to be sold within seven years.

Hearing Date: 2/11/09

Staff: Edie Adams (786-7180)

Background:

Eminent Domain

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

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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 simply that:

". . . private property [shall not] be taken for public use, without just compensation."

Article I, section 16 of the State Constitution is more detailed. It 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 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, declare the use of water for irrigation, mining, and manufacturing to be a "public use," and prohibit the exercise of eminent domain in conjunction with non-recourse revenue bond financing of industrial development projects.

In addition, there are hundreds of statutory sections in the Revised Code of Washington dealing with eminent domain powers. Some of these statutes prescribe the process for bringing condemnation actions, for determining whether a project meets the public use requirement, and for determining what constitutes the "just compensation" that must be paid to the owner of condemned property. Some of these statutes confer eminent domain powers on governmental entities ranging from counties to mosquito control districts, as well as giving the power of eminent domain to corporations such as railroads, electrical utilities, and pipeline companies.

Costs in Condemnations

A number of statutes provide for recovering various costs under particular circumstances in eminent domain proceedings. One of these 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.

Disposition of Condemned Property

Once property has been acquired through eminent domain, a question may arise as to when, or for what duration, the property is to be put to the stated use for which it was condemned. A variety of statutes require certain procedures be followed when a public agency decides to sell property. Most of these statutes are general in nature and apply to the sale of property regardless of how it was acquired. A few apply specifically to condemned property; at least two statutes require that the prior owner of condemned property be given the opportunity to buy back the property. Property that was acquired through condemnation as part of a port's industrial development district, but which is deleted from the district after less than two years, must be offered for sale to the prior owner at the appraised price. The Department of Natural Resources

is also required to offer condemned land that is no longer needed for sale to the former owner at the appraised price.

Summary of Bill:

At the time a 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. 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 60 days after the condemnor provides the initial written offer of just compensation, whichever period is longer. Prior to taking final action, the condemnor must provide a written response to the owner regarding its decisions on the proposed alternatives, including any reasons for rejecting an alternative.

The \$750 cap on reimbursable expenses incurred in evaluating a condemnation offer is increased to \$5,000.

An owner whose property is condemned or sold under the threat of condemnation has the right to repurchase the property if the condemnor, within seven years of acquiring the property, determines that it is no longer necessary for a public purpose and should be sold. If the condemnor has not put the property to use for a public purpose within five years of condemnation, the condemnor must provide written notice to a former owner certifying that the condemnor is making reasonable progress towards the project for which the property was condemned.

If a condemnor decides within seven years of acquiring the property that it is no longer necessary for a public purpose and should be sold, the condemnor must notify the former owner at least 90 days before the impending sale. The former owner may repurchase the property by paying the lesser of the current appraised value of the property, or the compensation price paid at condemnation plus interest accrued at the market rate. The repurchase price must be adjusted to reflect the value of any physical changes to the property as determined by an appraiser.

Appropriation: None.

Fiscal Note: Requested on February 6, 2009.

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